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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

—
No. 301
—

THE PALMER OIL CORPORATION, PAUL STERBA
and PAUL STERBA, JR., a minor by and through
his father and next friend, PAUL STERBA,

Appellants,

vs.

AMERADA PETROLEUM CORPORATION, ANDER-
SON-PRICHARD OIL CORPORATION, CITIES
SERVICE OIL COMPANY, et al.

—
APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA
—

STATEMENT AS TO JURISDICTION

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IN THE SUPREME COURT OF THE STATE
OF OKLAHOMA

No. 33336

Consolidated

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE PALMER OIL CORPORATION, a corporation,
et al.,

Plaintiffs-in-Error,

vs.

PHILLIPS PETROLEUM COMPANY, a corporation,
et al.,

Defendants-in-Error,

and

No. 33708

PAUL STERBA and PAUL STERBA, JR., a minor, by
and through his father and next friend, PAUL
STERBA, and THE PALMER OIL CORPORATION,
a corporation,

Petitioners,

vs.

CORPORATION COMMISSION OF OKLAHOMA, et al.,

Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme
Court of the United States, as amended, The Palmer Oil
Corporation, (hereinafter referred to as "Palmer"), as

appellant in Cause No. 33336 above, and Paul Sterba and Paul Sterba, Jr., a minor, by and through his father and next friend, Paul Sterba, and The Palmer Oil Corporation, a corporation, appellants in Cause No. 33708 above, submit herewith their statement, particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment, decree and decision of the Supreme Court of Oklahoma in the above captioned causes consolidated in said Court, the highest Court of the State of Oklahoma, in which a decision could be had.

I.

Opinion Below and Date of Finality and Date of Petition for Appeal Therefrom

With respect to the foregoing judgment, decree and decision of the Supreme Court of Oklahoma, the same was entered March 20, 1951, the opinion of the Court being reported in — Okla. —, 231 Pac. 2d 997, but the finality thereof was stayed by the order of said Court allowing appellants until May 4, 1951 in which to file petition for rehearing, such petition for rehearing having been filed in accordance with such order on May 3, 1951. Such petition for rehearing having been denied by the Supreme Court of Oklahoma without opinion on May 22, 1951, the finality of the judgment, decree and decision of said Court was further stayed by the filing and presentation by appellants on Monday, May 28, 1951 of appellants' application for leave to file second petition for rehearing pursuant to and in accordance with Rule 29 of the Supreme Court of the State of Oklahoma, as amended, the pertinent portion of which reads as follows:

APPLICATION FOR SECOND PETITION FOR RE-HEARING;

"Within five days after a petition for re-hearing is denied, an application for a second petition for re-hearing may be made, ~~but~~ not filed except by leave of Court."

Appellants' application for leave to file second petition for rehearing was, without opinion, denied by the Supreme Court of Oklahoma June 5, 1951, and its judgment, decree and decision became final upon said date.

A true and correct copy of the opinion of the Supreme Court of Oklahoma above referred to including dissenting opinions with respect thereto is hereto attached as Appendix "A"; a true and correct copy of appellants' Petition for Rehearing filed with respect to such opinion is hereto attached as Appendix "B"; a true and correct copy of appellants' Application for Leave to File Second Petition for Re-hearing and brief in support thereof filed with respect to such opinion are hereto attached as Appendix "C".

Appellants' Petition for Appeal from such final judgment, decree and decision was presented and allowed on the 30th day of July, 1951, within ninety (90) days from the final judgment, decree and decision sought to be reviewed herein, and hence such appeal is timely. (Title 28, U. S. Code, Revised, Sec. 2101.)

II.**Basis on Which It Is Contended the Supreme Court of the United States Has Jurisdiction**

The final judgment, decree and decision of the Supreme Court of Oklahoma upheld as valid Order No. 20289 of the Corporation Commission of the State of Oklahoma approving a written Plan of Compulsory Unitization

limited solely to the Medrano Sand bodies in the West Cement Oil and Gas Field in Caddo County, Oklahoma, affecting approximately 3700 oil and gas lease surface area acres with an estimated 98,000,000 barrels of oil in place in such sand bodies therein, the result of which was to compel non-assenting lease owners (including "Palmer") and landowners and royalty owners (including "Sterbas") to join in such unitization. In rendering such final judgment, decree and decision, the Supreme Court of Oklahoma construed certain statutes of the State of Oklahoma as authorizing such Order, denying thereby the specific and timely contentions of each of the appellants herein that said statutes and said Order as construed and applied to each of the appellants, their property rights and operations with respect thereto under the undisputed and indisputable evidence in the record, were repugnant to and violated the due process, equal protection and contract clauses of the United States Constitution and did not constitute a proper exercise of police power.

III.

Statutory Provisions and Décisions Believed to Sustain Jurisdiction

The statutory provision vesting the Supreme Court of the United States with jurisdiction of this appeal is Section 1257 of Title 28, United States Code Revised, the material parts thereof providing:

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its

being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The following decisions sustain the jurisdiction of the Supreme Court of the United States to review said final judgment, decree and decision of the Supreme Court of the State of Oklahoma on direct appeal in this case:

Champlin Refining Co. v. Corporation Commission, 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A. L. R. 403;

Bandini Petroleum Co. v. Superior Court of Los Angeles County, 293 P. 899, 110 Cal. App. 123, 284 U. S. 8, 52 S. Ct. 103, 76 L. Ed. 136, 78 A. L. R. 826;

Thompson v. Consolidated Gas Utilities, 300 U. S. 55, 57 S. Ct. 364, 81 L. Ed. 510;

Henderso i Co. v. Thompson, 300 U. S. 632; 57 S. Ct. 29, 74 L. Ed. 625;

Hunter Co. v. McHugh, 11 So. 2d 495, 202 La. 97, 64 S. Ct. 19, 320 U. S. 222, 88 L. Ed. 5.

IV.

The State Statutes and the Order of the Corporation Commission of the State of Oklahoma Issued Thereunder, Including the Written Plan of Unitization, the Validity of Which Is Involved

Order No. 20289 of the Corporation Commission of the State of Oklahoma (hereinafter referred to as "Commission") entered September 5, 1947, is based upon and was made pursuant to delegated legislative and judicial power granted to private parties by House Bill No. 339 of the 1945 Oklahoma Legislature (O. S. Supp. 1949, Title 52, Sec. 286.1 to Sec. 286.17, inclusive) hereinafter called the "Compulsory Unitization Act". A full, true and correct

copy of such House Bill No. 339 is attached hereto as Appendix "D".

The statutes involved became effective July 26, 1945, such Act being the first of its kind to be enacted by any state. Generally the "Compulsory Unitization Act" requires the Corporation Commission of the State of Oklahoma to approve any written plan of unitization for any oil and gas field in Oklahoma, which written plan has been formulated and petitioned for by 50 per cent (in area ownership) of the oil and gas leaseholds sought to be unitized. Upon approval of such written plan by the Commission the Plan and Order can be nullified by 15 per cent (in area ownership) of the oil and gas lease owners, or the Unit Plan may be amended by 10 per cent (in area ownership) of the oil and gas lease owners, or enlarged by 15 per cent (in area ownership) of the oil and gas lease owners. In this particular case the unit operations carried forth under the written plan are subject to control by 66 $\frac{2}{3}$ per cent in ownership of the interests (oil and gas lease owners) in the Unit as vested by the written plan. The royalty owners as such have no authority under the statute to initiate, alter or control any such compulsory unitization.

A full, true and correct copy of Order No. 20289 of the Corporation Commission of the State of Oklahoma, including its findings of fact and the Written Plan of Unitization by such Order approved is hereto attached as Appendix "E".

Statement and Nature of Case and Rulings of the Supreme Court of Oklahoma Bringing Said Case Within the Jurisdictional Provisions Relied Upon

Cause No. 33336 in the Supreme Court of Oklahoma was originally commenced before the "Commission" by the filing of a petition on October 22, 1946, by Amerada Petroleum Corporation, Anderson-Prichard Oil Corporation, Phillips Petroleum Company, Ray Stephens, Inc., Stephens Petroleum Company and Magnolia Petroleum Company (herein referred to as proponents) to enforce a compulsory unitization of all oil and gas leases and royalty rights in an area alleged to contain the "Medrano Sand" of the West Cement Field in Caddo County, Oklahoma, by means of a written plan submitted by said petitioners in accordance with the authority purportedly granted by the "Compulsory Unitization Act".

Appellant, Palmer, owner of an oil and gas leasehold within the area sought to be unitized, filed a written protest to said petition and proposed Plan of Unitization, alleging, among other things, that such compulsory unitization would contravene and violate the due process, equal protection and contract clauses of the Constitution of the United States as an improper exercise of police power and that said Medrano Sand did not constitute a single common source of supply of oil and gas.

Hearings were held before the "Commission" at various times beginning December 9, 1946, and ending July 25, 1947. The initial Plan of Compulsory Unitization was amended by its proponents on July 18, 1947, in order to give effect to a change of information or facts occasioned by the drilling and completion of Palmer's Sterba No. 7 well, on or about February 2, 1947. On September 5,

1947, the "Commission" entered its report and Order No. 20289 granting the petition and approving the Plan of Compulsory Unitization, as amended.

Palmer's oil and gas leasehold interest on 160 acres of land was derived through an oil and gas lease executed by Paul Sterba, and others (landowners-lessors) on February 18, 1936, to Chris Pearson, as lessee, who, in turn, assigned said lease to Gulf Oil Corporation. In September, 1938, Gulf Oil Corporation assigned its rights under said lease to Palmer to a depth of 6,000 feet, retaining an overriding royalty. The oil and gas lease under which Palmer acquired its leasehold interest is a customary form used in Oklahoma, which provides for many rights, duties and obligations as between lessor and lessee, with covenants, both express and implied. Said oil and gas lease did not provide for either unitization or pooling of the premises, and generally speaking required the lessee owner of the lease to drill, develop and operate the premises, paying or delivering to the landowner-royalty owner, $\frac{1}{8}$ th of the oil or gas, or proceeds therefrom, free and clear of expense of production. If oil and gas were not produced within the term of the lease, or if production was secured and thereafter ceased upon the premises, the lease, by its own terms, would end. The lessee, under the terms of said lease, had the right to use such surface area of the land reasonably necessary to drill, develop and operate the leased premises. The number of wells the lessee was required to drill, develop and operate and the location thereof was controlled by the "Commission" under the adequate Oklahoma Oil Conservation Statutes (Appendix "I") and the implied covenants of the lease. A full, true and correct copy of said oil and gas lease is hereto attached as Appendix "F".

The first oil and gas test well drilled in the area of the West Cement Field was completed on October 17, 1917 (being completed in a horizon other than the Medrano Sand). The first test well which resulted in production of gas in the Medrano Sand of the West Cement Field was completed October, 1936, on land located in the next governmental section to Palmer's leasehold, and the first well producing oil from the Medrano Sand in said Field, was discovered in March, 1943, on a quarter section adjacent to Palmer's leasehold.

Palmer completed its first well on its leasehold in October, 1938, which produced oil from the "Niles Sand" at a total depth of 3545 feet; completed its second well in May, 1939, which produced oil from the "Rowe Sand" at a total depth of 3401 feet; completed its third well in October, 1940, which produced gas from the "Medrano Sand" at a total depth of 5260 feet; completed its fourth well in June, 1943, which produced oil from the "Medrano Sand" at a total depth of 5995 feet; completed its fifth well in August, 1943, to a total depth of 6000 feet, as a dry hole, being drilled into a fault; completed its sixth well on November 7, 1943, to a total depth of 6425 feet, as a dry hole, it having also been drilled into the same fault; and on May 21, 1947, completed its seventh well, which produced oil from the "Medrano Sand" at a total depth of 5992 feet.

It will be observed that "Palmer" had assumed the risks and expenditures incident to the drilling of six wells for oil or gas on its "Sterba" lease prior to the enactment of the "Compulsory Unitization Act".

The Written Plan of Unitization approved by Order No. 20289 of the "Commission" embraced 72 separate tracts of land comprising 3700 surface acres. Palmer's "Sterba" oil and gas lease is in the approximate center thereof. At

the time of the entry of the "Commission" Order No. 20289 each of Palmer's "Sterba" Medrano Sand oil wells were being allowed to produce 200 barrels of oil per day by the "Commission" under the General Oil and Gas Conservation Laws of the State of Oklahoma and were capable of producing such oil without waste. The Medrano Sand bodies underlying this area dip sharply from the Northeast to the Southwest ranging from an approximate depth below the surface of 4500 feet to about 6000 feet, the thickness of the sand bodies pinching out at the top of the structure but thickening at the bottom of the structure to a maximum estimated 125 foot thickness. The gas zone or zones are in the upper portions of the sand bodies with the oil zones immediately below the gas zones and water below the oil zones.

The evidence conclusively showed that the production of oil and gas in the West Cement Field had been and still remained under the jurisdiction of the "Commission" pursuant to the General Oil and Gas Conservation Statutes of the State of Oklahoma (Appendix I) and that "Palmer" had, at all times, drilled, developed and operated its said leasehold in accordance with the best known practices and procedures and without waste and in accordance with such conservation statutes.

Although the surface of the land covered by "Palmer's" leasehold represented only approximately 4 per cent of the Unit Surface Area, the division of interest formula used in connection with the Written Plan of Unitization shows that there was attributed to it in excess of 5,000,000 barrels of oil in place in the Medrano Sand bodies. The Plan originally assigned to "Palmer" 5.145 per cent of the production from the Unit Area, which, after the drilling and completion by "Palmer" of its seventh well above mentioned was shown to be in error to the extent that the

proponents of the Plan increased "Palmer's" per cent to 5.51614, the increase representing in excess of 175,000 barrels of oil in place.

The proponents in determining the division of interest between the various tracts within the Unit gave no consideration in the Plan either to (a) the comparative oil lifting costs involved in the production from each of the respective tracts, (b) the comparative efficiency of the respective operations on separate leaseholds, (c) the expense of any operator which, like "Palmer", had the misfortune to encounter faults resulting in dry holes in drilling for Medrano production, nor (d) the comparative operations of the respective operators of the respective leaseholds concerning their respective prior compliance or lack of compliance with the implied covenants of their respective leases to properly develop said leases and protect the same by drilling of said wells thereon—with which implied covenants "Palmer" had carefully complied.

While Gulf Oil Corporation (one of the proponents of the Unit) had never assumed the risk of drilling any well on the "Sterba" lease, proponents of the Plan assigned to Gulf Oil Corporation from the "Sterba" lease 2.15688 per cent of the total estimated Unit production on an assumption not based on fact that that portion of the Medrano oil under said "Sterba" lease was below the depth of 6000 feet and on the further assumption not based on law that "Palmer" has no drainage rights to that portion of the Medrano Sands below 6000 feet but which might be produced from a well completed above the depth of 6000 feet.

All of the known facts clearly show that the Medrano Sand in the West Cement Field was traversed by four geological phenomena known as "Faults" which completely segregated and separated such Sand into five seg-

ments or separate common sources of supply; that the great variation in gas pressure in said five separate segments showed there was no communication of oil or gas between said segments. Proponents stated purpose to compel unitization was for the conservation of gas energy; however, the evidence conclusively showed that two-thirds of all the gas within the Medrano Sand bodies had been produced or consumed before the Order of the "Commission" was made approving Compulsory Unitization.

Appellants, Paul Sterba and Paul Sterba, Jr., although owning an undivided $\frac{1}{8}$ th royalty right under their land and the "Sterba" lease, were not, under the provisions of the "Compulsory Unitization Act" given any voting voice and did not appear as parties in said cause before the "Commission", or participate therein.

After the Order No. 20289 of the "Commission" on September 5, 1947, "Palmer" moved to set aside the findings of fact made by the "Commission" which are shown in its report and findings (see Appendix "E") and requested the "Commission", among other things, to make the following findings of fact:

"... **SECOND:** The Medrano Sand Horizon in the West Cement Oil Field in Caddo County, Oklahoma, is completely separated into two or more common sources of supply from and between which there is no communication of oil or gas, by reason of the presence of faults extending through such horizon constituting sealed barriers. . . .

"**FOURTH:** That unitized management, operation and further development for and of oil and gas from the several separate common sources of supply thereof in the Medrano sand in the West Cement Oil Field in Caddo County, Oklahoma, will not substantially increase the recovery of oil and gas therefrom, or decrease the time in which the same will be recovered, adequate conservation measures now in force and ef-

feet being continued in force and effect by the Corporation Commission of the State of Oklahoma in respect thereto. . . .

“ELEVENTH: The division of interest or formula for the apportionment and allocation of the purported unit production among the several separately owned tracts within the proposed unit area under the plan of compulsory unitization here proposed, if adopted, is not fair, reasonable or equitable.”

“Palmer’s” motion to set aside findings of fact made by the “Commission” was denied and within due time “Palmer” perfected its appeal to the Supreme Court of the State of Oklahoma, which was there docketed as Cause No. 33336.

In Cause No. 33708, Paul Sterba and Paul Sterba, Jr., a minor, by and through his father and next friend, Paul Sterba, and The Palmer Oil Corporation, a corporation, as petitioners, on the 1st day of July, 1948, filed an application direct in the Supreme Court of Oklahoma against the Corporation Commission of Oklahoma, and the Unit operating Committee consisting of Phillips Petroleum Company, a corporation; Amerada Petroleum Corporation, a corporation; Anderson-Priehard Oil Corporation, a corporation; Ray Stephens, Inc., a corporation; Stephens Petroleum Company, a corporation; Gulf Oil Corporation, a corporation; Magnolia Petroleum Company, a corporation; Cities Service Oil Company, a corporation; Foster Petroleum Corporation, a corporation; and Sunray Oil Corporation, a corporation, as defendants, to assume original jurisdiction on petitioners’ petition for Writ of Prohibition to prohibit and restrain the defendants from enforcing the Commission’s Order No. 20289, which application to assume original jurisdiction was sustained and docketed as Cause No. 33708 and was consolidated with

Cause No. 33336, by Order of the Supreme Court of Oklahoma on September 25, 1948, reading as follows:

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
"No. 33,708

"PAUL STERBA, *et al.*,
Petitioners,

v.

"CORPORATION COMMISSION, *et al.*,
Respondents

ORDER

"IT IS ORDERED that the application of the petitioners for the Court to assume original jurisdiction in the above cause for the purpose of determining whether a writ of prohibition should issue against the respondents above named, be, and the same is hereby sustained.

"IT IS FURTHER ORDERED that the above cause be consolidated with cause No. 33,336—In the Matter of the Petition for the Creation of the West Cement Medrano Unit, and that the respondents above-named be granted until October 15, 1948, to respond to the application of the petitioners for a writ of prohibition.

"DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 25th day of September, 1948.

THURMAN S. HURST,
Chief Justice."

ENDORSEMENTS ON ORDER:

"Filed in the Supreme Court
of Oklahoma Sep. 25, 1948
ANDY PAYNE—*Clerk.*"

A true and correct copy of the Application to Assume Original Jurisdiction and Petition For Writ of Prohibition Or Other Proper Relief^o is attached hereto as Appendices "G", and "H".

Complete transcript of the record and all exhibits were duly filed in the Supreme Court of the State of Oklahoma

in said consolidated cause, abstracts and briefs by all parties in interest were duly filed and the consolidated causes argued on April 19, 1949, and thereafter (by the Supreme Court of Oklahoma) taken under advisement with the final judgment, decree and decision subsequently made and entered as hereinbefore stated.

The Supreme Court of the State of Oklahoma, in its final judgment, decree and decision, held the "Compulsory Unitization Act" and the Order of the "Commission" were in all respects constitutional, affirmed Order No. 20289 of the "Commission" and denied the Writ of Prohibition in the cause as consolidated.

VI.

Stage in the Proceedings Before the Corporation Commission of the State of Oklahoma and the Supreme Court of the State of Oklahoma at Which, and the Manner in Which, the Federal Questions Sought to Be Reviewed Were Raised and Passed Upon and Excerpts from the Record Showing Jurisdiction of the Supreme Court of the United States

Appellant, Palmer, first raised the Federal issues here involved by specific averments in its Response and Protest filed with the "Commission" on December 23, 1946, in respect to the petition filed to approve the Plan of Unitization for the Medrano Sand bodies of the West Cement Field. Palmer, in such Response and Protest, made express averments as follows:

- "FOURTH: (e) That the proposed unit plan and the statutory Act (House Bill No. 339 of the 1945 Legislature of the State of Oklahoma) are invalid, illegal and of no force and effect for the reasons:

- "1. That they are in violation of the due process clauses of the Fourteenth Amendment to the Constitu-

tion of the United States and Section 7, Article II of the Constitution of the State of Oklahoma.

"2. That they deny to respondent and protestant the equal protection of laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. . . .

"4. That they impair the obligation of the contracts of respondent and protestant in violation of Section 10, Article I of the Constitution of the United States and Section 15, Article II of the Constitution of the State of Oklahoma. . . .

"(d) That said unit plan submitted in said application and petition is inequitable, unfair and unjust insofar as it has application to the legal and equitable rights and interests of this respondent and protestant.

"(e) That said unit plan submitted and the application and petition for the creation of such proposed unit does not reflect facts justifying or permitting the approving of the proposed plan of unitization; that the proposed area for unitization is not one common source of supply."

The constitutional questions were not passed upon or considered at any time by the "Commission".

On September 5, 1947, "Palmer", after the overruling by the "Commission" of motions for new trial, filed its notice of appeal and its application for certification of facts to the Supreme Court of Oklahoma. On the same date the "Commission", in accordance with the applicable statutes, entered its Order, which, without formal parts, is as follows:

"JOURNAL ENTRY ALLOWING APPEAL

"Now on this 5th day of September, 1947, it appears to the Corporation Commission of the State of Oklahoma, that The Palmer Oil Corporation, a corporation, protestant in the above styled and numbered cause, has filed herein written notice of its intention to appeal to the Supreme Court of the State of Okla-

homa from the order of this Commission rendered herein on the 5th day of September, 1947, granting the application and petition for unitization herein, and that The Palmer Oil Corporation, a corporation, has requested this Commission to certify the entire record in this cause to the Supreme Court of the State of Oklahoma, as prescribed by law.

"Now, THEREFORE, it is ordered by the Commission that said appeal be granted and that the Secretary of the Corporation Commission of the State of Oklahoma cause the entire record in this case to be transcribed and submitted to the Chairman of the Commission for certification at the earliest possible date.

"Done at the office of the Corporation Commission, Capitol Office Building, Oklahoma City, Oklahoma, this 5th day of September, 1947."

Thereafter, and in due time, "Palmer" filed its petition in error with the Supreme Court of the State of Oklahoma, stating and alleging, among other things, as follows:

"... 1. The Statutes of Oklahoma, Title 52, Sections 286.1 to 286.17, Oklahoma Statutes Annotated (H. B. 339 of the 1945 Legislature) upon which said Commission based its authority to make its order and judgment, are invalid, illegal and of no force and effect for the following reasons:

"(a) That said statutes are in violation of the due process of law clause contained in the Fourteenth Amendment to the Constitution of the United States and Section 7, Article II of the Constitution of the State of Oklahoma.

"(b) That said statutes deny to this plaintiff-in-error equal protection of the Laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. . . .

"(d) That said statutes impair the obligation of the contract between this plaintiff-in-error and the lessors of its oil and gas mining lease in violation of Section 10, Article I of the Constitution of the United

States, and Section 15, Article II of the Constitution of the State of Oklahoma. . . .

“2. (a) That said statutes, as applied by the Commission in the approval of said plan of compulsory unitization, are in violation of the due process of law clause contained in the Fourteenth Amendment to the Constitution of the United States and Section 7, Article II of the Constitution of the State of Oklahoma.

“(b) That said statutes, as applied by the Commission in the approval of said plan of compulsory unitization, deny to this plaintiff-in-error equal protection of the Laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

“(d) That said statutes, as applied by the Commission in the approval of said plan of compulsory unitization, impair the obligation of the contract between this plaintiff-in-error and the lessors of its oil and gas mining lease, in violation of Section 10, Article I of the Constitution of the United States, and Section 15, Article II of the Constitution of the State of Oklahoma, and

“(e) That said statutes, as applied by the Commission in the approval of the plan of compulsory unitization, authorize and permit and the order and judgment of the Commission constitutes an unlawful delegation of power in violation of Section 1, Article IV and Article V of the Constitution of the State of Oklahoma. . . .”

Appellants, Paul Sterba, Paul Sterba, Jr., and “Palmer” specifically raised the same Federal issues as hereinabove set forth in their Petition for Original Writ of Prohibition and Brief filed in support thereof on the 1st day of July, 1948, and docketed as Cause No. 33,708.

The Federal issues and questions here involved were also expressly argued and discussed at length by brief filed by appellants in the Supreme Court of Oklahoma in the consolidated cause.

The Federal issues and questions here involved were

again presented by way of oral argument when said consolidated cause was argued before the Supreme Court of the State of Oklahoma on April 19, 1949.

The Federal issues and questions here involved under the Constitution of the United States were again presented in the Petition for Rehearing filed by appellants (see Appendix "B") and in the Application for leave to file second petition for rehearing and brief in support thereof (see Appendix "C").

VII.

Ground Upon Which It Is Contended the Federal Questions Involved Are Substantial

The issues involved in this appeal are far reaching and of great importance to the entire oil and gas industry and particularly to that business as it is conducted within the State of Oklahoma, one of the great oil producing states.

The oil and gas industry in the State of Oklahoma has been for many years and is now being conducted subject to the supervision of the "Commission" under the broad and comprehensive general conservation statutes relating to the production of oil and gas, which statutes (O. S. 1941, Title 52, Secs. 81 to 279, incl., as amended, to and including the year 1947, O. S. 1949 Supp., Tit. 52, 84 to 127.2) for the convenience of the Court are made a part hereof as Appendix "I". Under such general conservation statutes and the Rules and Regulations of the "Commission" adopted pursuant thereto, every purpose sought to be accomplished under the Written Plan of Unitization here under consideration could be accomplished, except compulsory unitization of an entire oil field and as a result and a part thereof the determination and assignment by private parties of the expenses and the participating rights under such compulsory unitization. (Denver

Producing and Refining Co. v. State, et al., 199 Okla. 171, 184 P. 2d 961). These general conservation statutes were originally sustained by the Supreme Court of the United States in the case of *Champlin Refining Co. v. Corporation Commission of Oklahoma*, 52 S. Ct. 559, 286 U. S. 210, 76 L. Ed. 752.

The Compulsory Unitization Act is not one of the Oklahoma General Conservation Statutes administered by the "Commission" but rather is a special statute which can only be made effective by the action of private parties. In this case by the actions of private parties, the appellants' oil and gas leasehold and royalty rights have been taken from them and their contractual rights impaired under the guise of the Compulsory Unitization Act, which from a conservation standpoint accomplished no more than was being accomplished under the general conservation laws.

The impact of the Written Plan of Unitization approved by "Commission" Order No. 20289 on appellant "Palmer" is to take from it and give to private parties the operation of "Palmer's" oil and gas leasehold estate, such private parties, without "Palmer's" consent but over its objection, determining the proportion of the benefits, if any, to which "Palmer" will be entitled, thus putting "Palmer", an independent oil producer, off of its property and completely out of business in the field involved. The impact of the Written Plan of Unitization approved by "Commission" Order No. 20289 on appellants "Palmer" and "Sterba" is to completely abrogate the lease contract agreement, completely destroying "Sterba's" (lessor's) right to compel performance of the lessee's contractual obligations under such lease contract, private parties again determining the assigned benefits to "Sterba" without his right to participate in any percentage vote with respect to

the creation or functioning of the "Written Plan of Unitization".

The Assignment of Errors in itself constitutes a statement clearly showing the grounds upon which appellants contend the Federal questions involved are substantial, and for the convenience of the court the Assignment of Errors is here set out at length, namely:

"ASSIGNMENT OF ERRORS

"The Supreme Court of the State of Oklahoma erred in deciding that Order No. 20289 of the Corporation Commission of Oklahoma, in Cause CD 1308, and the Plan of Compulsory Unitization approved thereby and the statutes (House Bill 339 of the 1945 Legislature, Title 52, Oklahoma Statutes Supplement 1949, Sections 286.1 to 286.17, both inclusive), upon which said Court determined said Order and Plan were authorized, as construed and applied to appellants by the decision and judgment of said Court under the undisputed and indisputable evidence in the record, did not deprive appellants of their property without due process of law or deny to them the equal protection of the laws in contravention to the provisions of Section I of the Fourteenth Amendment to the Constitution of the United States, and did not impair the obligation of appellants' leasehold contract in contravention of Section 10, Article I of the Constitution of the United States, because

(a) Said Order, Plan and statutes are an unreasonable exercise of the police power.

(b) Said Order and the findings in support thereof are contrary to the undisputed and indisputable evidence in the record in that the record shows no waste of oil or gas, as defined or contemplated by the Oklahoma Conservation Statutes (Appendix "I"), was being committed, that correlative rights of producers, landowners and royalty owners in and to oil and gas were being protected and conserved in accordance with the general conservation statutes of the State of

Oklahoma and the subsisting Orders of the Commission thereunder.

(e) Said Order, Plan and statutes completely deprive appellants of their property and places it in the hands of private parties to control its management, further development and operation.

(d) Said Order, Plan and statutes completely divest personal, property and contract rights vested and established long before the making of said Order and Plan and the enactment of said statutes.

(e) Said statutes are too broad, vague and unspecific to constitute any reasonable guide to the Commission in making of any Order approving any Plan of Unitization thereunder.

(f) The undisputed evidence establishes that there was no single common source of supply of oil and gas, which is necessary to justify any type of oil and gas conservation statutes.

(g) Said Order, Plan and statutes provide for and constitute more than mere regulations of the business of producing oil and gas, completely taking away from appellants their contractual rights under the oil and gas lease and their rights to possess and develop the property for oil and gas, substituting therefor merely a right to share in the proceeds arising from oil and gas production from the entire Unit.

(h) Appellants, Paul Sterba and Paul Sterba, Jr., as owners of the land and royalty, are not, under the statutes, Order or Plan of Unitization, given any voice in respect to any matter concerning the compulsory unitization.

(i) Said statutes, Order and Plan of Unitization provide for the taking of private property not for a public use or public purpose, but for private purposes and private gain.

(j) Under said statutes percentages of private parties are authorized to decide whether a particular oil and gas field should be unitized and, if so, the type or plan of unitization, and their private decision, at their will, is submitted to the Commission for approval; if approved by the Commission, a certain per-

centage of private parties still have the right to completely nullify the Plan or amend the Plan, or enlarge the Plan, and in any event, control the future operations under the Plan and the winding up and closing thereof; the Commission has no right of its own to initiate the proceedings or formulate the Plan, amend or change the Plan, or otherwise control the Plan, except its power under the general conservation laws.

(k) Said statutes, Order and Plan provide for an unlawful delegation to private parties of the authority to determine legislative policy on any oil field within the State of Oklahoma, and particularly the West Cement Field.

(l) Said statutes, Order and Plan of Unitization unlawfully delegate arbitrary legislative authority to certain percentages of private persons to determine the legislative policy in respect to any oil field within the State of Oklahoma, and particularly the West Cement Field.

(m) Said statutes, Order and Plan unlawfully delegate to private parties the judicial power of determining the rights of royalty owners and minority lessees in respect to any oil field within the State of Oklahoma, and particularly the West Cement Field.

(n) Said Order and Plan unlawfully delegate arbitrary judicial and legislative power to private parties to determine the rights of royalty owners within any oil field of the State of Oklahoma, and particularly the West Cement Field.

(o) Said statutes, Order and Plan provide for drastic changes in contractual and property rights which are not reasonably necessary to promote conservation of oil and gas or prevent waste thereof.

(p) Said statutes, Order and Plan provide for arbitrary, unreasonable and capricious procedures and methods by which private parties determine rights of other private parties in and to any oil field of the State of Oklahoma, and particularly the West Cement Field.

(q) The Order and Plan are unreasonable, arbitrary and capricious and are not based upon the undisputed and indisputable evidence in the record.

(r) The undisputed and indisputable evidence showed conclusively that geological faults separated the Medrano Sand in the West Cement Field into several, separate common sources of supply."

For the purpose of clarity, it may be said, without waiving any of the Assignment of Errors, as referred to, that the fundamental contention of appellants is that the "Compulsory Unitization Act", the order No. 20289 entered by the "Commission" approving the Written Plan of Unitization, as applied to the business and property of appellants, constitutes an unreasonable and discriminatory exercise of the police power. Without intention to limit appellants' contentions in this respect, the unreasonable, arbitrary and discriminatory features of the "Compulsory Unitization Act", the Order No. 20289 of the "Commission" and the written Plan of Unitization approved by said Order, may be grouped and discussed under subheads as follows:

(a) The "Compulsory Unitization Act", the Order of the "Commission" and the Written Plan of Unitization, as applied to the rights of the appellants, are more drastic than reasonably necessary in the taking away of vested contract and property rights.

The taking of property, the impairment of obligation of contract or the unequal protection of law, resulting from a statute operating prospectively, is never as serious a matter as the injury done to owners of vested property rights by a statute which has a retroactive operation. The "Compulsory Unitization Act" (Sec. 286.2) does not apply to any field where the discovery well was drilled twenty years prior to the effective date of the Act, or to any field which, on the effective date of the Act, operated under pressure maintenance, repressuring, or secondary methods of operation. Although the West Cement Field

was discovered in the year 1917, the discovery was not in the Medrano Sand Zone and the "Commission" held that the Medrano Zone was within the provisions of the law, even though the Medrano Sand was discovered in 1936, more than ten years before the petition was filed to unitize the Medrano Sand bodies.

No reason is shown on the face of the Act why the "Compulsory Unitization Act" should have any retroactive effect, or as to why it should have a retroactive effect for a period of twenty years rather than ten years, or five years or any other period, or why it should exclude existing fields being operated under pressure maintenance and not fields which may be operated after the effective date of the Act under voluntary pressure maintenance.

While the pronounced purpose of the "Compulsory Unitization Act" is to secure greater recovery through pressure maintenance and secondary recovery operations, the matter of pressure maintenance is completely out of the picture in respect to the Medrano Sand, as more than two-thirds of the gas in place was produced or dissipated prior to the "Commission's" Order of September 5, 1947.

The leasehold contract between Sterbas and Palmer had been vested and developed many years before the enactment of the Unitization Act and their rights were completely eliminated and reduced to that of sharing in a fractional percentage of the gross production from the Unit. "Palmer" lost its right to drill, develop and operate its own leasehold. Sterbas lost their rights to have "Palmer" drill, develop and operate such leasehold and compel performance of the express and implied covenants of the lease, including the right to control the use of the surface as might be reasonably necessary to operate the premises. The matter of pressure maintenance and secondary recovery operations do not require that these con-

tract and property rights be entirely taken away with a mere right to share in a portion of the production being substituted therefor. Pressure maintenance and secondary recovery operations could be carried forth without denying appellants the right to possess and operate their own property.

The further drilling, operation and development of the Unit is entirely within the discretion of the operator, subject to the control of the Operating Committee by a vote of 66 $\frac{2}{3}$ rd's per cent. The operator under the control of the Operating Committee could drill, produce or abandon any oil and gas test wells at any place on the premises at any time in its discretion and could change any or all methods of operation and completely wind up and disunitize the unit at any time within its discretion without being subject in any way to the voice or desire of appellants.

(b) The "Compulsory Unitization Act" is completely lacking in due process and equal protection in respect to the rights of royalty owners.

The rights of royalty owners under oil and gas leases have been for many years recognized under the laws and judicial decisions of Oklahoma as being substantially equal to the rights of lessees. The royalty owners usually, as in this case, own $\frac{1}{8}$ th of the oil and gas produced, free and clear of costs of production and lessees own $\frac{7}{8}$ ths, subject to the cost and expense of production. The lessors, under repeated judicial decisions, are entitled to compel the lessees to comply with all express and implied covenants of the oil and gas lease.

Under the "Compulsory Unitization Act" the royalty owners have no right to petition for unitization, to set aside any unitization Order, enlarge or amend a Unit.

The "Sterbas" appeared in this matter for the first time when they joined with "Palmer" in their application before the Supreme Court of Oklahoma to take original jurisdiction of their Petition for Writ of Prohibition to prohibit further enforcement of Order No. 20289.

(c) The Unitization Act provides for an unreasonable and unlimited delegation of legislative and judicial power to private parties.

The "Compulsory Unitization Act", the Order of the "Commission" and the written Plan of Unitization were not merely matters of delegated legislation—they are also a delegation of judicial power and authority. There is involved the legislative policy of determining whether a particular oil and gas field should be unitized and, if so, the judicial power of determining the manner in which such field should be unitized and the interest to be assigned to the respective owners thereof.

The matter of determining policy may be legislative but the matter of completely taking away contractual and property rights and substituting therefor something entirely different, even with notice to the lessees, is a judicial determination of rights. Judicial power was also exercised when it was determined that there existed a single common source of supply which could be subject to unitization.

The legislative and judicial power delegated is not a delegation to a state agency, but is rather a delegation to private parties. These private parties have the power in the first instance to decide the policy of whether a field should be unitized; the "Commission" or State agency has no authority in this respect. When these private parties once determine, as a matter of policy, that the Medrano Sand bodies of the West Cement Field should be unitized, then as a part thereof, they also decide the manner in

which it should be unitized, and what should be assigned to each party as his interest in such unit. The only power vested in the "Commission" is to approve or reject the unitization as recommended by private parties. The "Commission" has no authority to enlarge a unit plan, to amend, alter or change such plan, or to supervise operations under the plan, except at the will of private parties. The delegation of legislative and judicial power to private parties under the provisions of the "Compulsory Unitization Act", and as approved by Order No. 20289, and the Plan of Unitization, is a vicious and dangerous type of delegation, arbitrary and unreasonable. The unlawfulness of this delegation is discussed and referred to in an annotation in 3 A. L. R. (2d) 188.

The legislative declaration set forth in Sec. 286.1 of the "Compulsory Unitization Act" is:

"It is desirable and necessary . . . to authorize and provide for unitized management and operation of oil and gas properties . . . to which the act is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented and the correlative rights of the owners in a fuller and more beneficial enjoyment of oil and gas rights, protected."

The declaration sounds good, but means nothing. What is the standard of "greater ultimate recovery?" The word "waste" is nowhere defined in the "Compulsory Unitization Act". The word "waste" is defined in the general conservation law, but it is admitted by all parties that no waste was occurring in the operation of the Palmer-Sterba lease in the Medrano Sands of the West Cement Field.

The words "fuller and more beneficial enjoyment" likewise are undefined and have no definite meaning.

The so-called facts required to be found under Sec. 286.7

of the "Compulsory Unitization Act" and after a finding, of which the "Commission" is required to enter an Order approving the Unit, are not facts in any sense of the word, but are merely generalities which could not operate as standards or guides for any specific plan of unitization. See. *Bandini Petroleum Company v. Supreme Court*, 293 P. 899, 110 Cal. App. 123, affirmed 284 U. S. 8, 52 S. Ct. 103, 76 L. Ed. 136.

(d) The "Compulsory Unitization Act" provides for a discriminatory delegation of legislative and judicial powers to a certain percentage in interest of private parties.

The legislative and judicial power delegated under the "Compulsory Unitization Act" and approved by Order No. 20289, and the Written Plan of Unitization, is not only one to private parties, but to a stated percentage of interest in private parties. 50 per cent of the lessees initiate and recommend the Plan (Sec. 286.5), 15 per cent may nullify any Order made or Plan approved by the "Commission" (Sec. 286.6), 10 per cent may petition to amend the Plan (Sec. 286.11) and 15 per cent (Sec. 286.12) may seek to enlarge the unit. 66 $\frac{2}{3}$ per cent control all future drilling, development and operations under the Plan, and the dissolution thereof.

Any Unitization Act, the life, existence and operation of which depends upon the will of a percentage in interest of the private parties having interests therein, is, on its face, arbitrary and unreasonable as to those who do not have a sufficient percentage in interest to protect or enforce their own rights and views. See *Carter v. Carter Coal Company*, 298 U. S. 238, 80 L. Ed. 1160, and *State of Washington, ex rel. v. Roberge*, 278 U. S. 116, 73 L. Ed. 210.

(e) The findings of the "Commission" were unsupported by the evidence and the basic fact—the

existence of a common source of supply or common property—necessary to be established before any type of conservation legislation can be sustained under the police power, was a matter of serious dispute, and all known facts which were undisputed, clearly showed there were separate common sources of supply within the Medrano Sands of the West Cement Field, and, therefore, there was no common property to be unitized.

All reports of the geological and engineering committees were prepared and presented on the theory that the Medrano Sand of the West Cement Field was separated into five separate segments caused by geological faults which traversed the sand. Pressures were different in each segment. Dry holes established these faults completely through the oil zones.

In all cases where conservation legislation has been sustained, as a reasonable exercise of the police power, the crucial fact—the existence of a common source of supply or common property—has been established without doubt or question. See annotations in 78 A. L. R. 834.

(f) The methods and procedures used in this case in defining the Unit and in determining the interests in the Unit, were unreasonable, arbitrary and unfair and were not reasonably related to conservation or the protection of correlative rights.

There were included within the Unit at least 1020 acres of land under tracts upon which no oil and gas wells had been drilled to a depth sufficient to encounter the Medrano Sand and such tracts were assigned definite interests in the Unit. There were included within the Unit tracts upon which dry holes were drilled and completed to the Medrano Sand, and such tracts were assigned interests in the Unit.

The private parties who formulated the Written Plan and presented the same to the "Commission" and who are

the holders of the operating rights thereunder pursuant to the percentage provisions of the "Compulsory Unitization Act" endeavored to justify the percentage allocation of benefits, if any, thereunder by a formula which was unsound, unreasonable and arbitrary.

On May 26, 1951, Enrolled Senate Bill No. 203, having been passed by both Houses of the Oklahoma Legislature, approved and signed by the Governor as an emergency measure, repealed Title 52, Chapter 3 (b), Sections 1 to 17, inclusive, Session Laws 1945 (which is the "Compulsory Unitization Act"), here complained of. A full, true and correct copy of Senate Bill No. 203 is attached hereto as Appendix "J".

Senate Bill No. 203 appears to be prospective in its application and reflects a recognition on the part of the Oklahoma Legislature of the invalidity of the former "Compulsory Unitization Act", irrespective of any objections which we have raised against the Order of the Commission and the Written Plan of Unitization, removing in this new Act not one but each and every one of the unconstitutional provisions in the former "Compulsory Unitization Act" to which we have objected.

Article V, Section 54 of the Constitution of the State of Oklahoma reads as follows:

"The repeal of a statute shall not revive a statute previously repealed by such statute, nor shall such repeal affect any accrued right, or penalty incurred, or proceedings begun by virtue of such repealed statute."

Accordingly, Appellants, to have relief, must secure the reversal of the Final Order, Judgment and Decree of the Supreme Court of the State of Oklahoma, here on appeal, irrespective of the repeal by the Legislature of the State

of Oklahoma of the "Compulsory Unitization Act" of 1945, complained of.

WHEREFORE, it is respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal under Title 28, U. S. Code revised, Sec. 1257.

Dated this 30th day of July, 1951.

COLEMAN HAYES,
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Oklahoma City, Oklahoma,
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CHARLES E. JONES,
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APPENDIX "A"**OPINION OF THE SUPREME COURT OF OKLAHOMA, INCLUDING DISSENTING OPINIONS**

(Filed in Supreme Court of Oklahoma Mar. 20, 1951.
Andy Payne, Clerk.)

**IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA**

No. 33336

THE PALMER OIL CORPORATION, a corporation, et al.,
Plaintiffs-in-Error,
vs.

PHILLIPS PETROLEUM COMPANY, a corporation, et al.,
Defendants-in-Error,
and

No. 33708

**PAUL STERBA and PAUL STERBA, JR., a minor, by and
through his father and next friend, PAUL STERBA, and**
THE PALMER OIL CORPORATION, a corporation,
Petitioners,
vs.

CORPORATION COMMISSION OF OKLAHOMA, et al.,
Defendants.

SYLLABUS

1. The Legislature is itself the judge of the conditions which warrant legislative enactments, and they are only to be set aside when they involve such palpable abuse of power and lack of reasonableness to accomplish a lawful end that they may be said to be arbitrary, capricious,

and unreasonable, and hence irreconcilable with the conception of due process of law. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are ordinarily matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.

2. The police power of the State extends to defining the correlative rights of owners in a common source of oil and gas supply, providing for the management, operation and further development of such common source of supply and distributing the proceeds thereof among those entitled thereto.

3. House Bill 339 of the 1945 Legislature (Tit. 52 O. S. Supp. 1947, secs. 266.1 to 286.17), known as the Unitization Act is not violative of secs. 7, 15, 23 or 24 of Art. II, or sec. 1 of Art. IV or secs. 1 or 51, of Art. V, of the Constitution of the State of Oklahoma, nor violative of sec. 10 of Art. I or of the Fifth or Fourteenth Amendments to the Constitution of the United States.

4. The Unitization Act does not involve any unconstitutional delegation of legislative power by the provision which requires the petition of lessees of record of more than fifty percent of the area of the common source of supply in order to give the Commission jurisdiction under the Act.

5. Order No. 20289 of Corporation Commission is not contrary to either the law or the evidence.

Proceedings before the Corporation Commission by Phillips Petroleum Company and others, lessees, who petition for the creation of a unit, having for its purpose the unitized management, operation and further development of what is termed the West Cement Medrano common source of supply of oil and gas. The Palmer Oil Corporation and others, lessees, lessors and royalty owners, pro-

tested. From an Order of the Commission creating the unit protestants appeal.

ORDER AFFIRMED

Original action by The Palmer Oil Corporation, et al. against Corporation Commission for Writ of Prohibition.

WRIT DENIED

Claude Monett, Coleman Hayes and Mart Brown, all of Oklahoma City, Oklahoma and Mark H. Adams, Charles E. Jones and Wm. I. Robinson, all of Wichita, Kansas, For Plaintiff-in-Error, The Palmer Oil Corporation.

Hatcher & Bond, of Chickasha, Jack W. Page, of Oklahoma City, For Plaintiffs-in-Error, Tom Potter, et al.

Harry D. Page and Booth Kellough, both of Tulsa, Oklahoma, For Defendant-in-Error, Amerada Petroleum Corp.

Brown, Darrough & Ball, of Oklahoma City, For Defendant-in-Error, Anderson-Pritchard Oil Corp.

Wm. C. Liedtke, Russell G. Lowe, Redmond S. Cole, Cyrus L. Billings, James B. Diggs, Jr., and Charles L. Follansbee, all of Tulsa, For Defendant-in-Error, Gulf Oil Corporation.

Walace Hawkins, of Dallas, Texas, W. R. Wallace, Oklahoma City, Okla., For Defendant-in-Error, Magnolia Petroleum Co.

Don Anderson, Oklahoma City, For Defendants-in-Error, Stephens Petroleum Co. and Ray Stephens, Inc.

Don Emery, Rayburn L. Foster, R. B. F. Hummer, R. M. Williams, all of Bartlesville, and Harry D. Turner, of Oklahoma City, For Defendant-in-Error Phillips Petroleum Co.

George W. Hazlett, Villard Martin, Wilbur Heard, R. M. Williams, Chas. B. Ellard, A. B. Taneo, Forrest M. Darrough, J. H. Crocker, M. Darwin Kirk, T. Murray Robinson, Amici Curiae.

Gibson, J.

Cause No. 33,336 is an appeal from an Order of the Corporation Commission providing for the unitized manage-

ment, operation and further development of what is designated as "West Cement Medrano Unit", located in Caddo County, Oklahoma, made in pursuance of the provisions of 52 O. S. Supp. 1945, secs. 286.1 to 286.17. Cause No. 33,708 is an original action for a Writ prohibiting the Corporation Commission from exercising further jurisdiction in the matter of said unitization. Since the question of the issuance of the writ depends upon the issues involved on the appeal the same will be disposed of following determination of the appeal.

Involved on the appeal are two major questions. One, the constitutionality of said sections of the statute which, as a whole, constitute what is known as the Unitization Act (H. B. 339 of the 1945 Oklahoma Legislature). The other, the legality of the order of the Commission if authorized under the Act to effect unitization. These questions will be considered in the order stated.

The nature of the Act and the purposes sought to be accomplished thereby are clearly reflected in the legislative declaration made in the first section thereof, as follows:

"Sec. 286.1. The Legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights, protected."

Plaintiffs-in-error recognize that the subject-matter of the Act is one within the police power of the State and that the constitutional questions presented are whether the Act constitutes a reasonable exercise thereof.

We will refer to and state or quote the particular provisions of the Act involved on considering the arguments directed thereto.

The plaintiffs-in-error, though gumerous, represent but three classes in interest: lessors, lessees and those having, severally, royalties interest which are in excess of one-eighth of the total production.

On behalf of the lessees it is contended that the Act is violative of Art. II, sections 7, 15, 23 and 24 of the Constitution of the State of Oklahoma, and of Art. I, sec. 10, of and the Fourteenth Amendment to the Constitution of the United States. For the purpose of the presentation, there is no segregation of the contentions as to each of said constitutional provisions for the expressed reason the grounds relied on have common application to all. Two grounds are relied on. One, the Act as a whole is unreasonable. The other, the Act constitutes an unauthorized delegation of legislative power.

On behalf of the lessors it is contended that the Act is violative of all of said constitutional provisions and of sec. 51 of Art. V of the Constitution of the State of Oklahoma. The several violations are referable to definite grounds which have common application and there is no occasion to segregate the contentions as to each. Five grounds are relied on. One, the Act constitutes an unauthorized delegation of legislative power, which ground is the same as lessees' ground number Two and is urged on the same bases. Two, that both in the formation of the unit and in the committee management thereof lessees only are recognized and therefore to the exclusion of the lessor. Three, the Act imposes an unauthorized burden upon the royalty interest in the production. Four, the Act imposes an unauthorized burden upon the leased premises of the lessor. And, fifth, the Act is violative of the obligations of contracts.

The substance of lessees' ground One is that the Act is unreasonable because it does not require as a condition to the establishment of the unit a finding by the Commission that, for the purpose of conservation, the application of Act will be more effective than that of the existing laws. In support thereof attention is called to the fact that under the provisions of the Act the unit may be established in

fields where production has been had for nearly twenty years; that unitization, in which gas energy is a prime factor for operation, would be less satisfactory by reason of the expenditure thereof during operations prior to unification and would disturb the multitude of rights that had become established on the basis of the methods being employed under the existing laws. There is then declared:

"It is our earnest contention that a compulsory unitization statute which clearly disrupts the existing law and existing rights can only be justified where the advantages to be gained far offset the losses to be sustained to property or individual rights."

There are then recited the findings required of the Commission by the Act, and it is stated that thereunder "the Commission could approve a plan of unitization which definitely could not result in an increased recovery of oil and gas over that being accomplished by present methods of operation under the general conservation law." It is then declared that, by reason thereof:

"We submit that any compulsory unitization law, competing with the general conservation law whose real purpose is exactly the same, should not be given constitutional sanction under the police power unless it specifically provides that the Commission finds that any plan of unitization approved thereunder will accomplish the conservation of oil and gas with substantially greater results than is being accomplished under the general conservation law still in full force and effect."

The findings required by the Act appear in section 286.4 as follows:

"If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the Commission shall find (a) that the unitized management, operation and further de-

velopment of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water-flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply; and (b) that one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; and (c) that the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (d) that such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected, it shall make a finding to that effect. . . ."

As indicated in the contention, the Act does not authorize the Commission to withhold establishment of unification where in the opinion of the Commission oil conservation may be accomplished better under existing laws. It limits the findings required of the Commission to the ascertainment of definite facts which in the opinion of the Legislature are sufficient to justify application of the law.

There is no contention that the standards prescribed are insufficient in any respect other than in not including the suggested finding. Therefore, it necessarily follows that the contention challenges the authority of the Legislature in dealing with matters of policy, which is a realm that is without the scope of judicial inquiry. The Supreme Court of the United States, in C. B. & Q. Railroad Com-

pany, et al. v. McGuire, 219 U. S. 549, 55 L. Ed. 328, 339, said:

*** The scope of judicial inquiry in deciding the question of *power* is not to be confused with the scope of legislative considerations in dealing with the matter of *policy*. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance."

This Court, in *In re Application of Richardson*, 199 Okla. 406, 184 Pac. (2d) 642, said:

"The Legislature is itself the judge of the conditions which warrant legislative enactments, and they are only to be set aside when they involve such palpable abuse of power and lack of reasonableness to accomplish a lawful end that they may be said to be merely arbitrary, capricious, and unreasonable, and hence irreconcilable with the conception of due process of law."

To the same effect see *Herrin v. Arnold, Judge*, 183 Okla. 392, 82 Pac. (2d) 977; *Jack Lincoln Shops, Inc. v. State Dry Cleaners' Board*, 192 Okla. 251, 135 Pac. (2d) 332; *Phelps et al. v. Childers, State Auditor*, 184 Okla. 421, 89 Pac. (2d) 782; *City of McAlester v. Jones*, 181 Okla. 77, 72 Pac. (2d) 371; *Barnes 1. Smith, Judge*, 179 Okla. 71, 64 Pac. (2d) 1217; *Grable v. Childers, State Auditor*, 176 Okla. 360, 56 Pac. (2d) 357.

Though not necessary to so state, the Act reflects that the Legislature not only considered operations had and being had under existing laws but gave recognition to those methods employed which it considered to better serve the over-all purpose of conservation by withholding

the application of the Act thereto. Such is reflected in second section of the Act (52 O. S. Supp. 1945, sec. 286.2), which we quote:

"This Act shall apply only to common sources of supply of oil, oil and gas, or gas distillate in this State.

"The provisions of this Act shall not apply to any common source of supply of oil, oil and gas, or gas distillate or any part or parts thereof which at the effective date of this Act are being operated by or under pressure maintenance, repressuring, or secondary recovery methods or operations, provided, that nothing contained in this Act shall prevent the voluntary inclusion and extension of areas in which are located such existing pressure maintenance, repressuring, or secondary recovery methods or operations as unit areas under the provisions of this Act. Provided this Act shall not apply to any field where the discovery well has been drilled twenty (20) years prior to the effective date of this Act."

Lessees' ground number Two and lessors' ground number One, both to the effect the Act constitutes an unauthorized delegation of legislative power, have reference to the force of the following provisions of the Act:

*** To give the Commission jurisdiction hereunder, the petition shall be filed by, or with the authority of, lessees of record of fifty percent (50%) or more of the area of the common source of supply or portion thereof sought to be unitized. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the Commission as hereinabove provided and shall have attached thereto a recommended plan of unitization applicable to such proposed unit area and which the petitioners consider to be fair, reasonable and equitable. (Sec. 286.4).

"If at any time after the filing of a petition for the creation of a unit and within sixty (60) days after the entry of an order by the Commission approving the creation of the same, lessees of record of fifteen percent (15%) or more of the proposed unit area, if prior to the entry of the order by the Commission, or lessees of record of fifteen percent (15%) or more of the unit area as defined by the approved plan of unitization and order of the Commission, if after the entry of such order, shall file written protest with the Commission against the creation of the unit, the Commission shall vacate all action of any kind theretofore taken and dismiss the proceedings for the creation of such unit." (Sec. 286.6).

It is contended that, since the fact of the legislation is made dependent upon the will of a majority of those to be affected thereby, there is a delegation of legislative power. As supporting the contention that there has been an unauthorized delegation of legislative power and a violation of due process by reason thereof the cases of *Carter v. Carter Coal Company*, 298 U. S. 238, 80 L. ed. 1160, and *State of Washington ex rel. v. Roberge*, 278 U. S. 116, 73 L. ed. 210, are relied on. In the Carter case the donees of the power were given authority to make decisions determinable of the rights of others and in the Washington case the donees were given an arbitrary power to veto the exercise by others of their unquestioned rights. Neither situation obtains herein.

In the first place, the powers so granted can neither establish nor disestablish the unitization when established because the power of establishment rests with the Corporation Commission. In such situation there is not a trace of legislative power exercised. This conclusion is fortified by the fact that even if the establishment were dependent upon the will of the lessees their exercise thereof would not be the exercise of legislative authority. The reason for this is clearly reflected in the opinion of the

Supreme Court of the United States in *Currin v. Wallace*, 306 U. S. 1, 83 L. ed. 441. Therein it is said:

"So far as growers of tobacco are concerned, the required referendum does not involve any delegation of legislative authority. Congress has merely placed a restriction upon its own regulation by withholding its operation as to a given market 'unless two-thirds of the growers voting favor it.' Similar conditions are frequently found in police regulations. *Thomas Cusack Co. v. Chicago*, 242 U. S. 526, 530, 61 L. ed. 472, 475, 37 S. Ct. 190, L. R. A. 1918A, 136, Ann. Cas. 1917C, 594. This is not a case where a group of producers may make the law and force it upon a minority (see *Carter v. Carter Coal Co.*, 298 U. S. 238, 310, 318, 80 L. ed. 1160, 1188, 1192, 56 S. Ct. 855) or where a prohibition of an inoffensive and legitimate use of property is imposed not by the legislature but by other property owners (see *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U. S. 116, 122, 73 L. ed. 210, 214, 49 S. Ct. 50, 86 A. L. R. 654). Here it is Congress that exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required favorable vote upon the referendum is one of these conditions. The distinction was pointed out in *J. W. Hampton, Jr. & Co. v. United States*, 276 U. S. 394, 407, 72 L. ed. 624, 629, 48 S. Ct. 348, where, in sustaining the so called 'flexible tariff provision' of the Act of September 21, 1922, and the authority it conferred upon the President, we said: 'Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an Executive; or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be affected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power

has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district."

This type of legislation is not uncommon and has been applied in a variety of situations where community of interest obtains. Frequent examples are acts dealing with water rights and drainage. In Oklahoma it is reflected in 82 O. S. 1941, sections 111-273, providing for creation of Irrigation Districts upon petition of fifty or a majority of the holders of title to lands susceptible of irrigation; in 82 O. S. 1941, sections 281-382, providing for creation of Drainage Districts upon petition of five or more residents and further providing (sec. 311) that upon protest of 50% of the landowners, or owners of 50% of the total acreage embraced in the district, the proceedings are to be dismissed; in 82 O. S. 1941, sections 541-687, providing for creation of Oklahoma Conservancy District Act, upon petition of percentage of property owners and the dismissal of the proceedings upon protest of a percentage of the landowners; and 82 O. S. 1941, sections 721 et seq., providing for creation of Water Improvement District upon petition of fifty or a majority of the holders of title to lands in the proposed district. Under authority of these Acts districts have been created and thereafter have functioned. It does not appear that the constitutionality of any has been challenged upon the ground that the operation of the law is predicated upon the will of those whose interests are involved although the question of rights controlled by the Acts has been involved in litigation and the validity of the Acts recognized by this court. (Fry v. Swift, 164 Okla. 4, 22 Pac. (2d) 94; Seikel v. Grimes, County Treas., 189 Okla. 658, 119 Pac. (2d) 59). That question, however, has been presented frequently in other jurisdictions and, so far as we have noted, the uniform holding is to the effect there is no delegation of legislative power and in the briefs herein there have been cited no cases in

point holding to the contrary. *Stafe v. Drainage District No. 1*, 123 Kan. 191, 254 Pac. 372; *Barrett v. City of Osawatomie*, 131 Kan. 50, 289 Pac. 970; *Tarpey v. McClure*, 190 Cal. 593, 213 Pac. 983; *City of Dawson v. Bolton*, 166 Ga. 232, 143 S. E. 119; *Boagni v. Mayor and Bd. of Aldermen of City of Opelousas*, 177 La. 835, 149 So. 494; *Field v. Barber Asphalt Paving Co.*, 194 U.S. 618, 48 L. ed. 1142.

We are of the opinion that lessors' ground number Two is without merit. The basis of the conclusion is that there is not granted to the royalty owners like power of petition and protest as that granted to the lessees. Under the Act the landowners who have not leased their acreage are classed as lessees.

The question is not the wisdom of granting the right of protest to the lessees while withholding it from the royalty owners but whether it was within the power of the Legislature so to do. It was within the power of the Legislature to do so because being within its police power to enact the law without the consent of either lessees or royalty owners it was optional with it to require the consent of either. Where privilege is granted to some in such situation the Constitution is satisfied if all similarly situated are treated alike. This statement of the law has been declared in many decisions. A clear-cut statement thereof is made in *Taggart v. Claypool*, 145 Ind. 590, 32 L. R. A. 586, 44 N. E. 18. The United States Supreme Court, in *Field v. Barber Asphalt Paving Co.*, *supra*, said:

"The exact point of objection is that the improvement is not to be made if a majority of the resident owners of the property liable to taxation therefor shall file with the city clerk a protest against such improvement, which privilege of protest is not given to non-resident owners, thereby discriminating against them. It is well settled, however, that not every discrimination of this character violates constitutional rights. It is not the purpose of the 14th Amendment, as has been frequently held, to prevent the states from classifying the subjects of legislation, and making

different regulations as to the property of different individuals differently situated. The provision of the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed. (Citations omitted). The alleged discrimination is certainly not an arbitrary one; the presence within the city of the resident property owners, their direct interest in the subject-matter, and their ability to protest promptly if the means employed are objectionable, place them on a distinct footing from the nonresidents, whom it may be difficult to reach. Furthermore, there is no discrimination among property owners in taxing for the improvement. When the assessment is made it operates upon all alike. It has been held to be within the power of the legislature of Missouri to authorize the council to order the improvement to be made without consulting property owners. *Buchan v. Broadwell*, 88 Mo. 31. If the legislature saw fit to give to those most directly interested, and whose consent could be most readily obtained, the right to protest, such action did not deprive the other persons of rights guaranteed by the Constitution."

Involved under the Act are the plural rights of production from the common pool. The purpose of the Act is to so adapt the exercise of such rights that the value of the reservoir may be realized to the fullest degree possible by those entitled thereto and according to their respective shares therein. This can be done only through an intelligent control of the drilling operations. The royalty owners are those who have committed to lessees their right to produce in exchange for a definite share in the production. Such rights have been so committed in reliance upon the ability of the lessees to produce. Neither the fact of nor the amount of the royalty interest presents any problem for solution in establishing unification because same is recognized and fixed by the law. The real problem involves an appraisal and adaptation of the existing prob-

lems that rest upon the shoulders of the lessees. By reason of their responsibility the lessees have an interest that is distinctive from that of the royalty owners but it is not adverse thereto because the interests of the latter are dependent upon and must rise or fall with that of the lessees. By reason of their knowledge of the problems they, necessarily, are in a better position than the royalty owners to appraise the practicability and hence the wisdom of unification. To realize that the information they possess is deemed vital to a determination of the question of unification one needs only to read the showing that is required by the Act to be made. By reason of their activity the lessees are in a position to both attest the wisdom or lack of wisdom of unification and produce the evidence that is determinative thereof. The royalty owners, who by their own acts have completely divorced themselves from the activity, are often not conveniently accessible and could afford little if any helpful information if available, but they are granted the right of an appeal from the action of the Commission, and this case is an example of its exercise. The distinction between the lessees and the royalty owners as classes in interest and the reason why the Legislature should extend a privilege so responsible to one and not the other is so manifest that it precludes any idea that in doing so the legislative Act was capricious. Such being true there is no basis for holding the Act unconstitutional for that reason.

Lessors' ground Three, that the Act imposes an undue burden upon the royalty, has reference to the provisions of the Act which treats the royalty interest that is in excess of one-eighth of the production as a part of the lessees' working interest which is considered to be seven-eighths of the production. It is contended that, under the lease contract, the lessor is entitled to the full amount of the royalty run to his credit free from liability for operating expense. That his right in that respect is impaired because such royalty in excess of one-eighth of production is made liable for operating expense.

Under the Act an one-eighth part of the unit production

allocated to each separately owned tract is to be regarded as royalty and to be distributed to or among the royalty owners free and clear of unit expense; and the remaining seven-eighths is designated as a leasehold interest and made liable for the unit expressly chargeable to such tract. The effect of the unitization upon any royalty interest in excess of one-eighth under any existing lease and the provision made therefor is reflected in the following (52 O. S. Supp. 1945, sec. 286.9):

“Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold interest only in the unitized common source of supply (exclusive of a one-eighth (1/8) royalty interest) in and to each separately-owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately-owned tract. The interest of the lessee or other persons who by lease, contract or otherwise are obligated or responsible for the cost and expense of developing and operating a separately-owned tract for oil and gas in the absence of unitization shall, however, be primarily responsible for and charged with any assessment for unit expense made against such tract and resort may be had to overriding royalties, oil and gas payments, royalty interests in excess of a one-eighth (1/8) of the production, or other interests which otherwise are not chargeable with such cost, only in the event the owner of the interest primarily responsible fails to pay such assessment or the production to the credit therefor is insufficient for that purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which under the plan of unitization is not primarily responsible therefor pays in whole or in part the amount of an assessment for unit expense for the purpose of pro-

teeting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest, the owner thereof shall to the extent of such payment or deduction be subrogated to all of the rights of the unit with respect to the interest or interests primarily responsible for such assessment."

The importance of the segregation of a definite amount of the total production as royalty is manifest and it is further attested by the fact it is made an integral part of all leases where the cost of operation is to be borne by the lessee. It follows that such segregation is as fully important where the operation is unitized and operated as one lease. In such situation the question is whether the proportion of the production to be regarded as royalty is reasonable. The amount thereof is not called in question so far as the same affords the basis of the unit operation, but it is held that the effect thereof is to impose an unlawful burden on any royalty interest in excess of the one-eighth, if such there be. Considering as we must that the one-eighth royalty prescribed is reasonable to accomplish the over-all purpose, it follows that the right to the exceptional royalty as such must yield to the extent it militates against the plan but should be preserved to the extent it may be done consistently with such plan. We hold that the Act gives full recognition to such right and only varies the method prescribed in the lease for its enjoyment. Prior to unitization such a lessor would be entitled to receive the entire royalty share free from the cost of production. The enjoyment of this right, however, was based upon the obligation of the lessee to produce and so deliver. Under the unitization such obligation obtains upon the unit to the extent of an one-eighth royalty and the obligation of the lessee to account for the remainder is recognized and declared. The liability of any excess royalty is made possible because for the plan of operation it is accorded the status of a leasehold interest. But by reason of the lease contract treating it as royalty

the liability is made secondary and could only obtain where there was a breach of the obligation of the lessee to discharge the operation cost allowable thereto as part of the leasehold interest. We take it that the extent of the right and the assurance of its enjoyment is in substance preserved.

In support of lessors' ground number Four, it is urged that the Act authorizes the unit to burden the leased premises beyond the right of the lessee thereof to do so.

If it be true that the Act authorizes the unit to burden any premises beyond the right of the lessee thereof and at the same time in excess of what would be justified for the operation of the unit, such fact, appertaining to be a matter of detail in the operation of the unit, could not be held to affect the integrity of the Act as a whole because, by the terms of the Act, the provisions are made severable (52 O. S. Supp. 1945, sec. 286.16). Though the Act may authorize such an additional burden it does not require that such burden be placed thereon in derogation of the lessors' rights. And we cannot anticipate that those charged with the operations of the unit will exercise the powers granted in an unlawful manner.

The 50 per cent provision of Sec. 286.4 has hereinbefore been considered. No rights have been exercised under the 15 per cent provision of Sec. 286.6, though its validity is questioned here. It is unnecessary to determine the constitutionality of this provision at this time. The same is true of the 10 per cent provision of Sec. 286.11 providing for reconsideration by the Commission of the plan in operation and fixed correlative rights thereunder. These undetermined questions are reserved.

Bearing upon the contentions that the order of the Commission is contrary to the evidence there is said:

"The petition and amended plan of unitization and order of Commission approving the same in form follows generally the requirements of the statutes under which they were prepared and made. The broad issue raised by The Palmer Oil Corporation and other peti-

tioners in error is that the order of the Commission approving the plan of unitization was contrary to the clear weight of the evidence in one or more respects. The petitioners in error also raise the question of constitutionality."

The Act provides that one aggrieved by the order may appeal to this Court and defines the jurisdiction and duty of this court on appeal, as follows:

"* * * The Supreme Court on appeal shall have jurisdiction and authority and it shall be its duty to review the record of proceedings and transcript of evidence and to consider the validity of the order of the Commission appealed therefrom. On appeal the order of the Commission appealed from shall be regarded as *prima facie* valid, fair, reasonable and equitable, but if the order is found to be contrary to the clear weight of the evidence, in any one of such respects, the same shall be vacated and set aside and the cause referred to the Commission for further proceedings not inconsistent with the judgment of the court; otherwise the said order shall be affirmed." (Sec. 286.7)

By reason of the presumption which is expressly made to attend the order of the Commission there is cast upon plaintiffs in error the burden of showing that the order in the respects challenged is contrary to the weight of the evidence and we have repeatedly so held. Croxton v. State, 186 Okla. 249, 97 Pac. (2d) 11; Grison Oil Corp. v. Corporation Commission, 186 Okla. 548, 99 Pac. (2d) 134; Oklahoma Cotton Ginners' Ass'n. v. State, 174 Okla. 243, 51 Pac. (2d) 327; Denver Producing & Refining Co. v. State, 199 Okla. 171, 184 Pac. (2d) 961.

The importance of the rule lies in the fact that the formulation and execution of the legislative policy has been entrusted to the Commission because it is thought to be peculiarly experienced and fitted for the purpose and it is not to be contemplated that the courts may substitute

their notions of expediency and fairness for that of the Commission. Peppers Refining Co. v. Corporation Commission, 198 Okla. 451, 179 Pac. (2d) 899; Denver Producing & Refining Co. v. State, *supra*.

In the light of these governing rules we consider the several alleged grounds of error in making the order.

It is contended that the area of the West Cement Medrano Unit is not limited to one "common source of supply."

Under the Act, a unit must be limited to a common source of supply. The Act does not in express terms define a common source of supply, but there was at the time of the enactment a legislative definition of the term (52 O. S. 1941, sec. 84(c), now 52 O. S. Supp. 1947, sec. 86.1(c)), and we construe such definition as a part of the Act. Therein, the term is thus defined:

"(c) The term 'Common Source of Supply' shall comprise and include that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid, by a common accumulation of oil or gas or both; provided, that, if any such area is underlaid, or appears from geological or other scientific data, or from drilling operations, or other evidence, to be underlaid by more than one common accumulation of oil or gas or both, separated from each other by a strata of earth and not connected with each other, then such area, as to each said common accumulation of oil or gas or both, shall be deemed a separate common source of supply;".

That more than one common source of supply may exist in a given sand appears to be recognized in the statute and in *H. F. Wilcox Oil & Gas Co. v. State*, 162 Okla. 89, 19 Pac. (2d) 347, we held that more than one common source of supply could obtain in such sand by reason of faults that constitute impervious barriers between segments thereof.

The existence of faults in the unit area is recognized and the question before Commission was whether the segments of the sand were disconnected by reason of the faults. The findings of the Commission (in paragraph 2) which is directly responsive to the issue is as follows:

"* * * that the said Medrano sandstone underlying said above described lands as aforesaid constitutes a single common source of supply of oil and gas, all parts of which are permeably connected so as to permit the migration of oil or gas or both from one portion of said common source of supply to another whenever and whenever pressure differentials are created as a result of the production or operations for the production of oil or gas from said producing formation; that although faults are known to exist in parts of said common source of supply said faults do not prevent substantial migration of oil and gas and of pressures from one part of said common source of supply to another; that said common source of supply of oil and gas has heretofore been designated by the Commission and is generally known as the West Cement Medrano Pool."

The question of the faults in the area and the effect thereof had previously been before the Commission a number of times, and the study and hearings thereon had culminated in orders wherein the Commission found that the whole of the Medrano sand as then developed was in fact one common source of supply. At the hearing herein the testimony adduced was chiefly that of petroleum engineers and geologists who testified on the basis of both personal surveys made and of an interpretation of the accumulated data in the hands of the Commission. The testimony of these experts was in direct conflict but that of each was positive upon the issue. Under the circumstances the objection is necessarily addressed to only the weight of the evidence. Under the holding of this court and that of courts generally (Chicago, R. I. & P. Ry. Co. v. Pruitt, 67 Okla. 219, 170 Pae. 1143; 22 C. J. 728, sec. 823) the

weight to be given opinion evidence is, within the bounds of reason, entirely for the determination of the jury or of the court, when trying an issue of fact, it taking into consideration the intelligence and experience of the witness and the degree of attention he gave to the matter. The rule should have peculiar force herein where by the terms of the Act the Commission is recognized as having peculiar power in weighing the evidence. Since the evidence before the Commission was competent and sufficient, if believed, to sustain the order we must, and do, hold that the order is sustained by the evidence and that the contention is without merit. *Ft. Smith & W. Ry. Co. v. State*, 25 Okla. 866, 108 Pac. 407; *Bromide Crushed Rock Co. v. Dolese Bros. Co.*, 121 Okla. 40, 247 Pac. 74.

It is contended that the proposed area of the Medrano sand included within the unit has not been reasonably defined by actual drilling operations.

52 O. S. Supp. 1947, sec. 286.5, provides, in part, as follows:

“The order of the Commission shall define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

“Each unit and unit area shall be limited to all or a portion of a single common source of supply. Only so much of a common source of supply as has reasonably been defined by actual drilling operations may be so included within the unit area.”

Paragraph 4 of the Commission’s Findings of Fact, to which attention is called, is as follows:

“That the outer boundaries of said common source of supply of oil and gas underlying and by this Order included within theforesaid Unit Area have been reasonably defined by actual drilling operations, both by the drilling of wells within and the drilling of wells outside said Unit Area; that said Unit Area consists of approximately 3700 acres of land.”

It is urged (1) that the Commission does not find that "all portions of the alleged common source of supply included within the unit area has been reasonably defined by actual drilling operations", and (2) that there is included within the unit areas wherein the common source of supply has not been defined by actual drilling operations.

There is no merit in the first ground. Paragraph 2 of the Commission's findings, hereinbefore quoted and discussed, expressly finds that the sand constitutes a common source of supply throughout the area of the unit. The presumption is that same was made on the basis of the required statutory showing. And the Commission in effect so declares in Finding No. 12, where it is said that the plan of unitization "in all respects conforms to and complies with the requirements of H. B. 339 of the 1945 Oklahoma Legislature."

The limits of the pool and of the unit area were determined by the productive boundaries reflected in exhibits prepared by the Geological Committee and based on data and information gained from wells actually drilled to the Medrano sand or to depths sufficient to encounter the sand if present.

Within the unit there are numerous tracts on which no wells have been drilled into the Medrano sand. The source of the common supply thereunder, which is reflected in said exhibits, was predicated on the evidentiary force of drilling operations had in other areas.

It is not contended that the exhibits do not reflect the common source of supply under the undrilled tracts nor that the wells drilled elsewhere were not sufficient to show the existence of the supply thereunder—in fact, the expert witnesses of both plaintiffs in error and defendants in error testified that the drilling operations had were sufficient therefor. The contention is that actual drilling upon the tracts is required by the Act in order to justify a finding of the common source of supply. The contention is thus stated:

"Our interpretation of the statute requires the Commission to find that the common source of supply has

been reasonably defined by actual drilling operations in respect not only to the outer boundaries but also all tracts therein included, as well as the depth of the common source of supply."

The theory advanced is that the words of the statute, "reasonably defined by actual drilling operations", negative the idea that the finding can be predicated upon drilling operations had elsewhere, and that independently of the statutory provision opinion evidence of the existence of the common source of supply under such tracts based on the wells drilled elsewhere is mere conjecture. As supporting the latter contention *Myers et al. v. Shell Petroleum Corporation*, 153 Kan. 287, 110 Pac. (2d) 810, is cited as holding that the opinion evidence of an expert geologist on geological conditions at a point one-half mile distant from the control point was mere conjecture and could not be accepted as law. The court there did not expressly nor in substance hold that such distance from the control point, as a matter of law, made the opinion conjecture, but that by reason thereof and other facts, which would preclude the evidentiary force thereof the same was not permitted to go to the jury. However, even if the construction of the holding were justified it would not be persuasive as authority herein where the particularity which is required in a court of law does not obtain. *Peppers Refining Co. v. Corporation Commission*, *supra*.

Actual drilling upon the undrilled tracts or within a definite proximity thereto is neither prescribed by the statute nor by law. In fact, we are of the opinion that each is negated, the first by the language of the statute and the other by the holding in the *Peppers* case, *supra*.

The alleged mandatory force of the statute is predicated upon the use of the word "reasonably" as used in the statute. We think the use of the word precludes rather than justifies the construction claimed. If the word "reasonably" were omitted the words "defined by actual drilling operations" would import absoluteness. The effect of prefixing the word "reasonably" to the words "been de-

fined" necessarily qualifies the import of absoluteness which would obtain without it. In prescribing the formula the Legislature must have had in mind the impracticability of accomplishing the full purpose of the Act if its operation was to be conditioned upon actual drilling on all tracts. There is no prescription touching the places of the drilling operation nor the depth of the wells nor of what must be reflected therein. The only prescription is that the source of supply must have reasonably been defined thereby. The drilling operations required are simply those the evidentiary force of which is sufficient to justify a conclusion, by those capable in law of weighing the facts as to the existence of the source of supply. There is unanimity in the testimony herein that the wells drilled afforded sufficient evidence to define the common source of supply within the unit area and the Commission so found. We hold that said attack under the order is without merit.

It is contended that the discovery well in the West Cement field was drilled and completed more than twenty years prior to the effective date of the Unitization Act and, therefore, the Act does not apply to such field and, by reason thereof, there is no authority in law for the order of the Commission.

There is involved a construction of sec. 286.2 of the Act, quoted above.

The West Cement Medrano sand, which is the common source of supply of the unit, was discovered October 15, 1936. The first discovery of oil and gas in the area of the unit was on or about October 17, 1917, but same was in a sand different from the Medrano sand. The question is, which of the wells is the discovery well within contemplation of the statute. If it be the well drilled in 1917 the Commission was without authority to establish the unit. If it be the well drilled in 1936 the authority to establish the unit is beyond question. Such was the issue before the Commission, and thereon it held:

"That the West Cement Medrano pool is a field within the meaning of that term as used in the second

paragraph of Section 2 of H. B. 339 of the 1945 Oklahoma Legislature; that the term 'field' in ordinary usage has no fixed or definite meaning but is sometimes used to refer to the general area where a number of oil or gas producing formations are found and at other times used to refer to a particular common source of supply or pool; that as used by the Legislature aforesaid, the term was intended to relate to the particular common source of supply or pool sought to be unitized under the Act and not to any general area which in a broader sense could be termed a field; that in effect said Act throughout relates to and deals only with single common sources of supply of oil and gas."

It is said that the word "field" has a commonly accepted meaning which denotes the surface area where there is a production and carries no significance as to the sand from which the production is had and that, in absence of a different meaning, apparent or obvious from the statute or definitely indicated thereby, the word should be construed in accordance with said commonly accepted meaning. It is further said that since the term "common source of supply" is used frequently in the Act while the word "field" is used but once, as indicated, it must be presumed that the word reflected a different meaning than that of the term "common source of supply".

Defendants in error recognize the fact that the ordinary meaning of the word "field" is as contended and that the word appears only once in the Act. They do not question the correctness of said rules of construction where the force thereof is not limited. They contend that the rules are subservient and therefore subordinate to the fundamental rule of construction that the legislative intent is to be gathered from the entire Act. And, as declaring said rule and, at the same time giving an apt illustration of the limitations upon the rules relied on by plaintiffs in error, there is quoted from Meads et al. v. Human, 84 Okla. 82, 202 Pae. 797, the first paragraph of the syllabus, which is as follows:

"In considering a legislative enactment it is not safe to base a construction upon a particular word or phrase, for the language of legislative enactments is not always precise and accurate, and, besides, one portion may frequently be designed to extend, qualify, or limit another so that the meaning of one portion of a statute may depend upon the effect of another. Hence, it is an established rule in the exposition of statutes that the intention of the law-giver is to be deduced from a view of the whole and of every part of a statute taken and compared together. The several provisions of the statute should be construed together in the light of the general purpose and object of the Act and so as to give effect to the main intent and purpose of the Legislature as therein expressed. If possible a statute should be so construed as to render it a consistent and harmonious whole; if different portions seem to conflict, they should, if practicable, be harmonized, that construction being favored which will render every word operative rather than one which makes some words idle and nugatory."

In the light of this rule the question is what construction is consonant with the general purpose and object of the Act. That the functions of the Act have reference to a definite sand as the source of common supply and is without reference to other sand or sands that may afford another source of supply within the same field, is without question. As indicated in sec. 286.2, quoted above, the fact of previous development had in the area constituting the unitized pool, the extent thereof and the methods employed are taken into consideration and the functioning of the unitization plan is required to yield thereto in designated instances. It thus appears that the extent of development in the source of supply that is made subject to unification was within the legislative mind. If the well drilled in the field in 1917 had discovered the West Cement Medrano sand the Act would not authorize the unitization. The Act, in terms, makes no reference to any development

in any sand other than that to which the unitization is made to apply and it cannot be gathered from the Act that the fact of discovery of other production in the field is material to the operation of the unit. We are of the opinion that the only logical deduction to be made, when considering the Act as a whole, is that the discovery well, in the mind of the Legislature, is that well in the field that discovered the common source of supply which is the subject of the unification. To hold otherwise would not only defeat the legislative intent herein but in other situations as well because the court takes judicial knowledge of the fact major pools have been and may yet be discovered in areas where many years ago oil had been discovered in upper and shallower sands which have become practically if not completely depleted.

The order of the Commission is attacked upon the further grounds (1) the proposed "plan of unitization" is not "fair, reasonable and equitable" as required by sec. 286.5 of the Act, and (2) the "division of interest or formula for the allocation of unit production" is not fair, equitable and reasonable as required by said section.

These contentions require no extended discussions. They are directed solely to the weight of the evidence and the most that is shown in the argument is the existence of conflict in parts only of the evidence. Such does not challenge the weight of the pertinent evidence as a whole and for reasons hereinbefore stated does not disturb the presumption that attends the order of the Commission.

Plaintiff in error The Palmer Oil Corporation, a lessee, contends that the order of the Commission is particularly unfair, inequitable and unreasonable as to it as an operator.

Comprised within the unit is the S. W. $\frac{1}{4}$ of Sec. 35, Twp. 6 N., R. 10 W., upon which the Gulf Oil Corporation held an oil and gas lease from the owners. In 1938 Gulf assigned to Palmer all of its right, title and interest therein to the depth of 6000 feet, "retaining the lease as to the oil, gas and ~~and~~ ^{and} gas, together with all the rights, privileges and appurtenances thereunto belonging, below

the depth of 6,000 feet." The 6000 foot subsurface level passes through the Medrano sand by reason of which there is productivity in the sand both above and below said level. Palmer drilled a well to but not beyond said level and obtained production from said sand therein. Gulf has no well producing from the sand below said level and is not authorized under the Unitization Plan to drill and produce therefrom. The Palmer well was completed during the pendency of these proceedings before the Commission. The order of the Commission fixed the percentage of the authorized lease production that each should receive and hold same to be applicable to the production of the Palmer well. It is contended that the Commission was without authority to permit Gulf to share in such production. And further contended that the percentage division is unfair and contrary to the evidence if Gulf is entitled to so share.

The first contention is predicated solely upon the assumption that the rule of capture obtains. That it is subject to be modified by the State in the exercise of its police power we held in Wilcox Oil & Gas Company v. Bond, 173 Okla. 348, 48 Pac. (2d) 820. And that the right of capture as claimed herein does not obtain where by Act the State undertakes to protect the correlative rights of owners in a common source of supply, regulate the drilling and distribute the production thereof, we held in Patterson v. Stanolind Oil & Gas Co., 182 Okla. 155, 77 Pac. (2d) 83.

Pertinent to the second contention are the following facts. In the plan of unitization exhibited with the petition of the proponents the percentages of the lease production allotted were Palmer 5.145% and Gulf 2.538%, reflecting a lease total of 7.683%. Speaking generally, the total, or lease percentage, was predicated on the thickness of the sand underlying the lease and such thickness was deduced from the elevations of the top and bottom of the sand as ascertained by the surveys made. And the individual percentages based upon the proportions of the thickness which lay above and below the 6000 foot level. With the completion of the Palmer well it appeared as a matter of fact that the top of the sand at that point lay lower

than reflected in the earlier survey. And, such being true, without change in the depth of the bottom of the sand as established, there was reflected at that point a less thickness of sand than was considered in fixing the lease percentage of the pool production. Touching the effect of such discovery the Commission states in its report the following:

"In addition to the proceedings and notices aforesaid, further mention is here made of the fact that during the course of said hearing, The Palmer Oil Corporation drilled and completed an additional well on a lease owned by it in the aforesaid field, necessitating a relatively slight change in the percentage of interests of the several separately owned tracts in the field shown in 'Exhibit B' attached to the recommended Plan of Unitization, and also necessitating the inclusion of such additional well in 'Exhibit D' attached to said Plan of Unitization."

As a result, the original exhibits which reflected said percentages were amended so as to reflect the lease percentage at 7.67294% (same being .01006 less than before) and the shares of Palmer and Gulf therein at 5.51614% and 2.15680%, respectively.

The question before the Commission was the extent the common thickness of the sand on the lease as previously fixed was to be diminished by reason of the diminution of thickness reflected at the point where the well was drilled. Palmer contends in substance that the thickness was 108 feet, while the Commission found same to be 96 feet. The question of the thickness turned chiefly upon the depth of the top of the sand as reflected in said well. The testimony was conflicting. The Commission determined that the weight of the evidence lay in the testimony of one Montgomery, a witness for proponents, which was concurred in by the entire Geological Committee, and not in that of one McKee, a witness for Palmer, who testified to the contrary, and so found. Under the rules hereinbefore announced we cannot say that holding of the Com-

mission is contrary to the weight of the evidence nor that the percentages prescribed thereon are arbitrary.

The Order of the Commission is affirmed.

The Writ prayed in cause No. 33,708 is denied.

Arnold, C. J., and Corn, Halley and Johnson, J. J., concur;

Luttrell, V. C. J., and Welch, Davison and O'Neal, J.J., dissent.

IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

No. 33,336

THE PALMER OIL CORPORATION, A CORPORATION, ET AL.,
Plaintiffs in Error

vs.

PHILLIPS PETROLEUM COMPANY, A CORPORATION, ET AL.,
Defendants in Error
and

No. 33,708

PAUL STERBA AND PAUL STERBA, JR., A MINOR, BY AND
THROUGH HIS FATHER AND NEXT FRIEND, PAUL STERBA,
AND THE PALMER OIL CORPORATION, A CORPORATION,
Plaintiffs in Error

vs.

CORPORATION COMMISSION OF OKLAHOMA, ET AL.;
Defendants in Error
WELCH, J., Dissenting

At the outset I would emphasize the thought that it is too difficult to undertake to determine the constitutionality of the compulsory unitization act without in any manner discussing or considering the impact on this legislation of the positive provision therein which grants the unquali-

fied veto power for sixty days to fifteen percent of the lease owners by acreage.

By that provision, considered in its necessary connection with other provisions, the act speaks for itself and thereby announces, either that it is not a necessary and proper exercise of the police power for conservation, or that it is a delegation of the police power and legislative power of the state to the will or wishes of oil operators or lessees.

In view of the positive language of this veto power provision and its direct connection as an integral part of the unitization scheme, it remains as a puzzle to me how the court can uphold the act and treat this veto power provision as some character of a separate item which may remain as a question undetermined and reserved for future determination.

It is not contended merely that this veto power provision is a separate unconstitutional part of the act. If that were all it might well be said that if compulsory unitization may be forced upon forty-nine plus percent of lessees and one hundred percent lessors against their will, any possible veto power would be to that extent a welcome escape. But that is not the crux of the matter on this point at all. It is not contended merely that this veto power provision violates private rights, if it is contended at all that it violates private rights. The complete violation of private rights is accomplished by the overall, and other, provisions of the act. As to this veto power provision, it is in fact contended that such provision is one, and an important one, of the details which demonstrate the unconstitutional attempt by this legislation to take over, for private gain, the private property rights, and private contract rights of free citizens. With this contention I agree.

In behalf of this act it is contended that the necessity to conserve oil and gas and prevent waste is the source of the state's power to compel unitization and that such necessity authorizes and requires the state to compel unitization. But by provision of the act itself the act takes this power

away from the state and lodges it in lessees, that is, first the power to initiate the proceedings, and second, the veto power for sixty days. This is a negation of the necessity of this power in the state, or an unconstitutional delegation thereof as I view it.

The compulsory unitization order herein involved affected about 3700 acres of land embracing 72 tracts under separate ownership, with numerous oil and gas lessees of separate tracts, and several hundred owners of royalty interests in the oil and gas being produced and to be produced, from what was treated as one common source of supply. At the time of the order, distributed over most of the tracts, but not all of them, there were about fifty or more wells producing oil and gas, and some additional wells in process of drilling.

The order, over the objection of some of the lessees or operators engaged in producing oil, and over the objections of numerous land owners and royalty owners, directed the operation of the entire tract as a single unit. The result would be that a committee of the lessees would select one operator who would take over all leases and all operation of the entire acreage as to the stated source of supply, and all wells now producing oil or gas would be operated by that one operator, and all future wells would be drilled by that one operator at any or all places in the tracts, without regard to the contracted leases of the tract drilled; that all oil produced from the entire tract, or from any one or several of the 72 separate tracts would be marketed by the one operator, all expenses for operating the aggregate 72 tracts deducted, and the remaining balance distributed by the operator to the various lessees and royalty owners. This distribution would be made without regard to the separate tracts from which the oil came, and without regard to any ratio of production or ratio of expense as to the various separate tracts. That is, the entire tract of 3700 acres was to be drilled and produced, and the oil marketed, as if the aggregate tract constituted a *single unit*, covered by a single lease. The distribution of net proceeds was to be made according to a pre-arranged

calculation intended to represent a computation of the present and future oil production value of each separate tract. That is, each separate tract was considered and it was assigned, or there was allocated to it, a stated percentage of the whole unit's future production.

This appeal tests the constitutionality of the legislative act authorizing such action and the power of the Corporation Commission to make such an order, and tests the validity and fairness of the order, and the sufficiency of the evidence before the Commission.

In considering this matter and making the order the Corporation Commission acted pursuant to the provisions of 52 O. S. Supp. 1945, secs. 286.1 to 286.17. That act proceeded as a conservation measure on the premise that it was desirable and necessary in various circumstances to authorize and provide for unitized management and further development of an oil and gas field or pool found to be a common source of supply, "to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller more beneficial enjoyment of the oil and gas rights, protected." It authorizes the Corporation Commission to supervise and administer the act and to order and compel unitized management of whatever should be the proper area of the oil field or pool under consideration. The jurisdiction of the Corporation Commission, however, could not attach unless and until "lessees of record of 50% or more of the area * * * sought to be unitized" should file petition therefor. Then after giving notice in accordance with requirements of general oil and gas conservation statutes, and hearing all parties who desired to appear either for or against the petition, the Corporation Commission should go forward and order the unitization if it was found that such unitization was proper, and necessary in the interest of conservation, and if the unitization plan suggested by the petitioners or approved by the Corporation Commission was thought to be or was found to be for the common good and to result in general advantage to the owners of the oil and gas rights. Pro-

vision was then made that a committee of the oil and gas lessees would select a single operator who would thereafter operate the area involved as a single unit and distribute the net oil production according to the predetermined percentage to the various separate tracts of land involved, or to the lessees and royalty owners of each separate tract. It was then provided, sec. 286.6, supra, that at any time within sixty days after the entry of the order creating the unitization unit, lessees of record of fifteen percent of the unit area might file written protest against the creation of the unit and thereupon it should become the mandatory duty of the Corporation Commission to vacate the action theretofore taken and dismiss the proceedings for the creation of such unit. And lessees whether they did or did not join in the original fifty percent petition could join in this fifteen percent protest and destroy the unitization and accomplish dismissal of the proceedings, provided only that such action was taken within sixty days of the creative order of the Corporation Commission, and as stated in the majority opinion, any owner of land in the area not leased for oil and gas was to be classified as a "lessee" of his land for all purposes of the act. I deem it unnecessary to set out further detail provisions of the act except such as are stated here, and such as are generally referred to in other paragraphs of this opinion.

The petition to the Corporation Commission in this instance was signed by lessees of more than fifty percent of the area sought to be unitized, and said petitioners attached thereto a complete plan of unitization set out in great detail and at great length, with their statement of a percentage division or allocation to each separate tract of a stated interest in the future oil production from the aggregate area. And petitioners alleged they considered their stated plan and division to be fair, reasonable and equitable, all as required in section 286.4, supra.

Both lessees and royalty owners appeared and protested, but after notice and hearing the Corporation Commission made findings in favor of the petitioning lessees that unitized management of this area was proper and reasonably

necessary for the purposes set out in the act, and that such unitized management would probably result in greater ultimate oil production. And the Corporation Commission approved the detailed plan of unitization presented by petitioning lessees, and ordered unitization over the objection and protest of those operators and owners of royalty interests who appeared in opposition to unitization as aforesaid.

The unitization act makes special provision for appeal to this court from such an order, Sec. 286.7, supra, and such appeal is authorized under the general oil and gas conservation statutes. 52 O. S. 1941, Secs. 111, 112, 113 and 136, as those sections are referred to in the present act in section 286.7 thereof.

While other serious questions are presented, I think the constitutional attack is controlling. Appellants in effect and in final analysis point out a number of provisions of the act, and objections thereto as it is here applied, which they urge demonstrate several violations of constitutional provision and of individual constitutional rights. We list them as follows:

1. The act, though purporting to be necessary, and justifiable under police power, for conservation, may only be brought into operation by petitioning lessees of fifty-percent or more of the area involved.
2. That after hearing and determination by the Corporation Commission that unitized management is necessary, and will prevent waste, and will probably result in greater recovery at no increase in net costs, and that the unitization is for the common good and to the best advantage of all; and after the Corporation Commission has ordered the unitization plan into effect, and after unitized operation has commenced, the order may in effect be "stricken," and the unitization vacated and abolished by the mere protest against it in sixty days of lessees of fifteen percent of the unit area affected.
3. That the act recognizes only lessees in the formation of the unit, in the percentage that has the veto power in sixty days, and in the committee management of the unit,

to the exclusion of any participation therein by the land-owner lessors and all others who have fixed interests in the oil being produced and thereafter to be produced.

4. That the act purports to authorize abrogation of contract rights and relieve lessees of contract liabilities and that the unitization does abrogate or supersede all contracts between landowner lessors and their chosen lessees, and that is accomplished upon, or by, action of the lessees alone.

5. The same objections as affecting others than original lessors, who have theretofore acquired fixed interests in the oil production.

6. That the act authorizes contingent operating expense liens against royalty interests which theretofore by express contract had been protected against any such liens and against any share or portion of operating expenses.

7. That by the fixed purpose of the act, and by the unitization, no lessee can get that for which he contracted, that is, his full portion of the oil produced from the tract on which he took his oil and gas lease.

8. That by the fixed purpose of the act, and by the unitization, no landowner lessor can count on receiving that for which he contracted, that is, his fixed share of the oil and gas produced from his land, and the result must be that oil taken or produced from one man's land is used in part to pay royalty to another who owns other and separate land in the unit area.

9. The same objection as applies to others than land-owner lessors who have acquired fixed interest as royalty or shares of production.

10. That the act and unitization plan abrogates or nullifies various specific provisions of lessor, lessee contracts such as the right to receive delay rentals, rights to free gas for individual use, rights of lessor as against excessive surface use for pipe lines, or such excessive use for tank construction.

11. That as to objecting lessees the act operates to take the oil and gas leases acquired by them and assign or set over such leases to the unit for unitized operation for

the benefit of all, thus in direct effect taking private property for private use and private gain without consent of the owner.

12. That as to land in the so-called unit area not leased for oil and gas operation, the act operates to compel the owner to submit his land to drilling operations whether he wishes to do so or not, and that for direct benefit to other private persons or corporations, and that as concerns the owner of any such land the act operates in effect to coerce and compel him to engage with others in the oil production business whether he wishes to do so or not.

To state the above numbered objections would seem to demonstrate that the legislative act and the unitization plan do transgress constitutional provision and do violate constitutional rights.

As to objection number one, the proponents of unitization contend that the act is justified under the police power and as a conservation measure. But that justification and purpose loses much force by the fifty percent provision above noted. If the State may compel unitization under its police power and for conservation, then why should not such power be exercised without depending upon the will and wishes of fifty-percent of the lessees of the area affected? It would seem that if there is such justification it would exist as well where a majority objected to commencement of the proceedings as in the case where fifty percent were willing to move forward as petitioners. On this point the proponents cite cases upholding "proration" and "spacing." But when the State, acting through the Corporation Commission, exercises those powers, there is no dependence in the first instance upon the assent of fifty-percent.

What we have just said applies with even more force to objection number two. It is a most unusual kind of exercise of police power and exercise of the power of conservation to provide that after the Corporation Commission has investigated and made solemn findings as to necessity, feasibility, applicability to prevent waste, general benefits and common good, and has put into operation the

exercise of the police power for conservation, that the whole thing may be nullified by the mere written protest of holders of fifteen percent of the lease rights affected. I am not impressed with the argument that a regulation is so necessary for conservation and of such urgent character as to justify such drastic action under the police power of the state, and yet be under such control of the persons most affected as to be subject to veto by fifteen percent after it has been implemented by all of the hearings, findings and orders employed to put it into effect.

On this point the proponents of unitization cite cases upholding the Barbers' Act and the Dry Cleaners' Act where prices are fixed by percentage of those most affected. But in those cases the prices fixed are not maximum but are minimum prices and the individual operator is left to operate his own business. In those instances there is no taking over of the individual business and the operation of all such businesses as a unit by one operator, for the so-called general good of all interested parties.

It seems to me that in objections one and two there is demonstrated entirely too much delegation of the legislative power, or perhaps it is better stated, too much delegation of the police power of the State to persons financially interested in the regulation itself, and that on account of such delegation the act and the unitization plan cannot find constitutional sanction.

As to the third objection, while the oil and gas lessees may be said to be the persons most interested in the application of unitization, the landowner lessors and other royalty owners have a fixed interest in the oil being produced and to be produced, and it is pointed out that the act and the plan are so framed as to allow such generous consideration of the lessees with no consideration or participation whatever by lessors or royalty owners. The oil field or source of supply may only be brought into the jurisdiction of the Corporation Commission for application of the State's police power and conservation power by action of fifty-percent of the lessees. When the Unitization plan is put into effect it is operated and managed by

a committee composed exclusively of the lessees. The advance calculation of the various interests to govern distribution of production was set up by the petitioning lessees. And during the first sixty days of operation of the unit it is to the stated percentage of lessees that the veto power is given. The interests of the lessors and lessees differ only in degree, that is, in percentage of ownership of the production. Equal protection of the law would seem to dictate that such exclusive control could no more be given to the lessees to the exclusion of the lessors than could such exclusive control be given to the lessors and royalty owners to the exclusion of the lessees. Therefore the constitutional right to equal protection of the law is violated.

As to objection number four, of course the act authorizes and the plan effectuates almost complete abrogation of the lease contracts between lessors and lessees. About the only provision of the lease contract which is preserved is the provision as to the ratio of sharing between lessor and lessee, and that provision is not fully preserved if the lease provided for a royalty of more than one-eighth of the oil produced. That provision is not fully sustained for the further reason that in unitization the lessor does not continue to receive the contracted share of the oil produced from his land, but, instead, he receives the contracted share of the percentage of the over-all production which is allocated to his land. This may of course be more or it may be very much less than the oil produced from his land. Although the over-all purpose of the act and of the plan is to increase ultimate production, we cannot say with certainty that every lessor will receive as much compensation or compensation of equal value to him under unitization, as he would under separate drilling and production of his land as he contracted for with his selected lessee.

What I have said also applies to objection number five. And as to both objections four and five it appears that even the royalty share which the owner was entitled by contract to receive may be reduced by operation of the

unitization plan, or at least there may be or may come into existence a lien on some part of the royalty share for operating expenses. Such a lien or the probability of such a lien is specifically provided by section 9 of the act, which is section 286.9 supra and is carried forward by express provision of the unitization plan submitted by the petitioners, and approved by the Corporation Commission.

I observe of course that functioning of the well spacing law or of the proration law operates in some measure to affect the contracts between lessor and lessee. But such effect is only upon what might be the desire of the lessee to drill more wells or the desire of both lessor and lessee to produce oil more rapidly. As to those operations there is nothing like the taking over of contract rights which is here evident. We observe the authorities justifying the abrogation of the contract rights in the interest of or in subservience to the police power of the State. But we do not observe authority for such an abrogation of contract rights as is here evident by action of the lessees for their own individual interest. And we are convinced that this act and the unitization plan impair and abrogate contracts and contract rights far beyond any constitutional authorization.

What we have said above disposes somewhat of objection number six, but we should emphasize it with this further suggestion. Though royalty owners, by express contract with the original lessee operator, might be specifically entitled to receive the agreed share of production as royalty, without any part of the operating expense, yet, if the aggregate royalty share exceeds 12½% or $\frac{1}{8}$ th, the excess would be subject to being burdened with liens for operating expenses if they were not paid by the lessee operator who agreed to pay them. It is pointed out that in case any such royalty owner should be compelled to pay any portion of operating expenses that by subrogation he would have a claim therefor against his contract party who agreed to pay them, but in that I see no fair substitution for the contract right to receive the royalty free of any charges for operating expense.

As to objection number seven, it is clear from the act and the unitization plan that no lessee is to receive the agreed portion of the oil which he may produce from his leased premises. Any plans he may have made for his drilling campaign and production and marketing procedure are necessarily cast aside. In lieu thereof the operator, chosen by a majority of the committee, will develop the lessees' premises as much or as little as they determine. The lessee will be paid not his share of his production or the production from his leased premises, but his share of the pre-determined percentage which the calculated productivity of his lease tract bears to the aggregate pre-determined productivity of the entire area.

In this action I observe, of course, that if such lessee controls sufficient area he may veto the act and the plan if he does so within sixty days. And in considering purely the economies of the act and plan it might seem that if more than eighty-five percent find the plan wholesome and profitable and desirable, the remaining less than fifteen percent should not be heard to complain. But it has ever been true, that constitutional rights have not been sustained or withheld depending upon the service or advantage thereof to majorities. Most often constitutional prohibitions or constitutional rights have been enforced in favor of and for the protection of minorities, no matter how small the percentage so occupied by the minority in question.

What I have said as to objection number seven applies with equal force to objection number eight and nine considered in behalf of landowner lessors and other royalty owners. It is inevitable that in many instances the royalty received must be substantially less than the fixed royalty share of the production from the individual tract of land. It necessarily follows that oil produced from one man's land would be taken in part to pay royalty to another who owned a separate tract of land in the unit area. While this might be justified under some proper type of exercise of the State's police power for conservation, I think clearly it cannot find constitutional sanction in the

manner undertaken by this act and this plan as aforesaid.

As to stated objection numbered ten, the rights specially mentioned are rights of value. In Wise v. Tabor, 201 Okl. 428, 206 P. 2d 970, this court recently considered the rights of a surface owner or lessee as against excessive surface use by the oil operator in the construction of storage tanks, and that right was held to be of substantial value, so that a threatened invasion of such right could be prevented by injunction.

As to stated objections numbered eleven and twelve it must be conceded of course that this taking of private property is accomplished without consent of the owner and results in private use and private gain. But the proponents of this unitization would say that the taking resulted in or was for the joint use and gain of the owner and the others interested in the unit, and that the taking resulted in no loss to the owner, but, on the other hand, resulted in gain to him. That is nothing more or less than to argue that the taking was not without adequate compensation. But the Constitution, in Art. 2, Sec. 23, prohibits such a taking *with or without compensation*. Thus a violation of this provision cannot be measured by, or condoned on account of, compensation, no matter if the compensation is wholly adequate or even exceeds the value of the property taken. The constitutional inhibition is against such a taking without consent. I submit that a taking in violation of this constitutional provision for the private gain of others jointly with the owner, or such a taking which inures to the benefit of others along with the owner, but against his consent, is just as much a violation as it would be if the taking produced gain solely to others than the owner.

We observe the extensive argument of the over-all benefits of the unitized operation of an oil field or a common source of supply. It may be that in the aggregate the production expense would be reduced and the ultimate recovery of oil be increased. It might be that ultimately each lessee would receive as much money or profit as any one of them could receive by regular private operation.

It might be that ultimately each contract would return as much in royalty payment as any one contract would return under private operation. We do not understand that it is contended to be certain that every lessee and every lessor will receive as much or more under unitization than he might receive under ordinary separate tract or individual management. If it were so contended it would be based somewhat on theory or speculation. In any event, while those items are interesting they are not controlling on the constitutional question. The most we can say here is that a large percentage of the lessees believe this plan to be wholesome and good, and profitable and desirable; that the percentage of lessees who find and believe the plan unprofitable as to them, and grievously undesirable, and think it to be discriminatory and detrimental to their property interest is a small percentage comparatively, yet it is a percentage of large financial investment and of large potential oil value. Likewise, the royalty owners who find the plan objectionable and believe it to be unfair, and find the original calculation of percentage of interest to be discriminatory against them and to be inequitable, represent rights and interests which in the aggregate run into a large sum. Indeed, the royalty interests of some of the landowners may mean more to them than the oil company investment in this area would mean to any one of the companies who as lessees initiated this proceeding, calculated percentages of ownership, and who operate the unit.

© This is a large oil field. It appears that the interests owned even by small royalty interest owners may be of substantial value. Certainly the interest of every protesting lessee and of every protesting lessor or royalty owner merits full protection. That full protection under our constitution seems to me to require that each landowner and his lessee be permitted to manage their own premises in drilling for and producing oil therefrom, subject only to reasonable and necessary regulation by the State under its police power. At least that must be our conclusion as con-

cerns any application of this effort to take over this area under the unitization act and plan here considered.

In this jurisdiction we have always gone forward in the conservation of oil and gas and in the protection of correlative rights. The State, through the Corporation Commission, has extensive power in the prevention of waste. I consider it right that the State should have great power to exercise necessary controls in the production and withdrawal of this natural resource. But surely individual enterprise should be encouraged, and individual property rights and contract rights should be upheld. The State should have much power to regulate, and insofar as necessary to restrict and control the production of oil and gas. But it should not be necessary that the State take over production theretofore carried on by landowner and lessee. Much less should it be necessary for the State to authorize a majority group of lessees to take over the operations of other lessees, to the objection and detriment of minority lessees, and over the objection of all royalty owners. We do not mean to say that in this case all of the royalty owners object to this act, or to this plan of unitization, but as we read the act it would make no difference if every royalty owner did object and complain.

On this point it is somewhat significant that some lessees and some royalty owners desire this unitization while other lessors and other lessees object and protest. It would seem inevitable that in final analysis some lessees will obtain a greater return by unitization than they would without it, and that inevitably some lessees will receive less return with unitization than they would without it. The same applies exactly to landowner lessors.

In *Carter v. Carter Coal Company*, 298 U. S. 238, 80 L. ed. 1160 the Court considered the Federal "Bituminous Coal Conservation Act of 1935" and held the act unconstitutional for some of the objectionable features which find parallel in the State Act here considered. In the opinion (L. ed. 1189) the Court said:

"The power conferred upon the majority is, in effect the power to regulate the affairs of an unwilling

minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business. * * *

This language applies with force to the provisions of this Act which confer power upon the majority in the first instance to say whether the Corporation Commission shall ever acquire jurisdiction. If that is legislative delegation in a very obnoxious form, then how would we characterize the more obnoxious delegation to fifteen-percent of the operators to nullify the whole proceedings by a mere protest in sixty days? This protest they may make w/out showing any reason therefor, or for any reason or for no reason.

In *Washington ex rel. v. Roberge*, 278 U. S. 115, 73 L. ed. 210, the Supreme Court considered an ordinance in reference to the location of a philanthropic home for children or old people when two-thirds of the owners of property within 400 feet should consent. The Superintendent who passed upon applications for building permits denied the application to build such a home solely because of the applicants' failure to furnish such consents, and in reference to the ordinance the court said on page 214 L. ed as follows:

"The superintendent is bound by the decision or inaction of such owners. There is no provision for review under the ordinance; their failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily, and may subject the trustee to their will or caprice. *Yick Wo v. Hopkins*, 118 U. S. 356, 366, 368, 30 L. ed. 220, 225, 226, 6 Sup. Ct. Rep. 1064. The delegation of power so attempted is repugnant to the due process clause of the 14th Amendment. *Eubank v. Richmond*, 226 U. S. 137, 143, 57 L. ed. 156, 158, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76,

Ann. Cas. 1914B, 192; Browning v. Hooper, 269 U. S. 396, 70 L. ed. 330, 46 Sup. Ct. Rep. 141."

Applying that rule to the act before us the Corporation Commission is bound in the first instance by the decision or inaction of 50 to 51 percent of the oil operators or lessees. The State, acting through the Corporation Commission, may not take an initial step toward this exercise of the police power for conservation of oil until and unless fifty-percent of the operators will it to be so. Thus, 51 percent or 50 percent plus, may in every instance prevent even the inception of a proceeding looking toward conservation of oil and gas by unitized operation.

And as to continuing jurisdiction of the Corporation Commission and as to continuation of the operation under unitization, the Corporation Commission is bound for sixty days by the decision or inaction of lessees of fifteen-percent of the area. The lessees or operators above mentioned, in exercising their preference or their will in the instances above stated, are not bound by any official duty, but are free to act or withhold action for private or selfish reasons or arbitrarily, and to the extent just noted they may in fact subject the unitization proceedings to their will or caprice.

It seems clear to me that this court should conclude this delegation of power so attempted to be repugnant to the due process clause of the Constitution.

In Eubank v. Richman, 226 U. S. 137, 57 L. ed. 156, the Supreme Court considered a city ordinance enacted under a statute of Virginia which ordinance provided, in substance, that when the owners of two-thirds of property abutting on any street should request it, a committee on streets should establish a building line not less than 5 nor more than 30 feet from the street line, with provision for penalty for violation of such property line establishment. The State Court upheld the legislation, but the United States Supreme Court held that it violated the 14th Amendment to the Federal Constitution in that such enact-

ment amounted to a deprivation of property without due process of law, and denied equal protection of the law.

Applying that rule here I must conclude that this act is equally invalid. It deprives operators and landowners of property without due process of law, and it likewise deprives some operators and all of the landowners or owners of royalty interests of equal protection of the law.

While the original 50% petition requirement standing alone would not or might not invalidate the act, it must be considered along with the other provisions as to the 15% veto power, and as to complete exclusion of all others than lessees. When so-considered the 50% petition provision is some indication or demonstration of the over-all length to which the act goes. And when all provisions of the act are considered we must hold that the length to which it goes transcends legal and constitutional authority.

As touching upon these points our attention is directed to various provisions included in our statutes under the title on "WATERS AND WATER RIGHTS." (Title 82 O. S. 1941). Those provisions deal with the making of various property improvements such as irrigation, drainage, flood prevention, stream channel control, land reclamation, and the like, and the construction of public water works. Since the cost of such improvements must be borne by the property owners or persons interested they are given voice as to whether the project shall exist or not. Those provisions bear no strict analogy to the act here involved. Those provisions are more nearly analogous to principles or provisions of general government where the will or wishes of the people govern as in the creation of some of our municipal subdivisions or the voting of bonds for improvements or utilities.

For the reasons stated, we conclude that the act violates Art. 2, Sec. 7 of the Constitution in that said act operates to deprive persons of property without due process of law, and said act violates Art. 2, Sec. 15 of the Constitution in that it operates to impair the obligation of contracts, and said act violates Art. 2, Sec. 23 of the Constitution in that it operates to take or damage private property for

private use, and specifically authorizes the taking and using of private property for private gain without consent of the owner, and said act violates Art. 2, Sec. 24 of the Constitution in that its operation purports to take private property for public use without just compensation, and said act violates Art. 4, Sec. 1, and Art. 5, Sec. 1 of the Constitution in that it purports to accomplish an unauthorized delegation of the legislative power and of the police power of the State.

It is suggested the conclusion that this compulsory unitization act is unconstitutional might destroy or deny or in some manner impinge upon the power of the Legislature generally to regulate the coequal rights of owners or operators to take oil and gas from a common source of supply. However, such result would in no sense be accomplished or indicated or intended. The Legislature does have such power, including the power to make private contracts conform to or submit to the necessary police power of the state, and has well exercised that power in providing for "well spacing" and "proration," and in making the various other provisions under which the taking of oil and gas by any and all persons entitled to take it is regulated. This case concerns only the authority of the Legislature to deal with such conservation and such rights *in the manner in which this act deals with such subjects.* In that consideration the test is whether the act is violative of constitutional provisions. This court must not substitute court views for legislative views as to methods of conservation or protection of coequal rights, but this court must discharge its duty to measure this act by the constitutional requirements as to the protection of all rights.

No decision is cited which has upheld such an act or anything like it.

I am authorized to say that Vice Chief Justice Luttrell, and Mr. Justice Davison and Mr. Justice O'Neal concur in this dissent.

IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

No. 33336

THE PALMER OIL CORPORATION, A CORPORATION, ET AL.,
Plaintiffs in Error,

v.

PHILLIPS PETROLEUM COMPANY, A CORPORATION, ET AL.,
Defendants in Error.

and

No. 33708

PAUL STERBA AND PAUL STERBA, JR., A MINOR, BY AND
THROUGH HIS FATHER AND NEXT FRIEND, PAUL STERBA,
AND THE PALMER OIL CORPORATION, A CORPORATION,
Petitioners,

v.

CORPORATION COMMISSION OF OKLAHOMA, ET AL.,
Defendants.

DAVISON, J., Dissenting:

I concur in the dissent written by Mr. Justice Welch.

I believe the majority opinion goes much farther than any opinion ever written on the subject of conservation under the police power of the state. If the Act in question and the order of the Corporation Commission thereunder can stand at all it is only because of the proper exercise of police power for the conservation of oil and gas and the prevention of waste thereof. Many decisions hold, however, that such power must be reasonably exercised, and that private rights should not be interfered with to a greater extent than is reasonably required by a proper exercise of the power, taking into consideration the legitimate object to be accomplished. *Orison Oil Corp., et al. v. Corporation Commission*, 186 Okl. 548, 99 P. 2nd 134. Under the record involved herein, I am of the opinion that

the power exercised by the Corporation Commission is unreasonable, unjust and unfair.

O. S. A. Title 52, section 286.6 of the Act in question provides, as follows:

"If at any time after the filing of a petition for the creation of a unit and within sixty (60) days after the entry of an order by the Commission approving the creation of the same, lessees of record of fifteen percent (15%) or more of the proposed unit area, if prior to the entry of the order by the Commission, or lessees of record of fifteen percent (15%) or more of the unit area as defined by the approved plan of unitization and order of the Commission, if after the entry of such order, shall file written protest with the Commission against the creation of the unit, the Commission shall vacate all action of any kind theretofore taken and dismiss the proceedings for the creation of such unit."

This provision of the Act denies lessors equal protection of the law. The Act gives a percentage of the lessees alone the opportunity to instigate proceedings for a proposed unit area, and at the same time affords fifteen percent of the lessees the right to nullify the proceedings. It therefore gives the lessees the vehicle to promulgate a unit area, and in the same clause gives the lessees another vehicle with which to backpedal therefrom and annul all proceedings thereunder. By this provision it appears the Act creates an improper delegation of the police power and legislative power of the State to the will and opportunities of oil operators or lessees. The Act is therefore legislation which benefits the individual lessees and operators rather than being a conservation measure.

The cases relied on in the majority opinion involve the pooling or spacing of small or irregular shaped tracts while the unit involved herein covers approximately 3700 acres of land consisting of 72 separately owned tracts with several hundred royalty owners.

I am of the opinion that the legislature, by the passage

of the referred to act has created a Frankenstein, under the guise of conservation.

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Defendants.

O'NEAL, J., Dissenting:

I agree with the views expressed by Mr. Justice Welch in his dissenting opinion.

It is my judgment this unitization act under the guise of preventing waste in the production of oil and gas from the earth transcends, to an unwarranted and unreasonable degree, regulation of the production of natural resources, and enters the forbidden zone of taking property out of the hands of the owners and placing it in the hands of third persons as individuals and not as a state instrumentality for the purpose of operation, without the consent of and in violation of their rights.

As I view this Act, it is an improper, unjustified and illegal delegation of police power by the state to private individuals, or corporations acting in a private capacity,

as distinguished from acting in the capacity of a duly constituted state instrumentality, answerable to the state. It may be that the state may create a state instrumentality and vest it with the police power for such purpose, making it answerable to the state for its activities and results, but certainly the state has no power under its constitution, or the constitution of the United States to delegate the police power to private individuals or private corporations for such a purpose, or for that matter, any purpose.

APPENDIX "B"

PETITION FOR REHEARING

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 33336

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PETITION FOR REHEARING

COMES NOW The Palmer Oil Corporation and Paul Sterba and Paul Sterba, Jr., a minor, by and through his father and next friend, Paul Sterba, and petition the Court

in this consolidated cause to grant them a rehearing from the decree in judgment rendered by this court on March 20, 1951, affirming in Case No. 33336 the order of the State Corporation Commission made in Cause No. 20289, and denying in Case No. 33708 petitioners' original petition for a writ of prohibition, and, as grounds for this petition for rehearing, state and show to the Court:

We desire to briefly refer to and comment upon certain material facts and contentions appearing in the record and presented in brief and oral argument, which the majority of the Court, as reflected by its opinion, overlooked, or to which it gave improper consideration. The more important of these facts and contentions, insofar as they relate to the constitutional questions involved, are as follows:

I.

The majority of the Court apparently failed to consider the pertinent facts, reflecting the destruction of the rights of The Palmer Oil Corporation by this compulsory unitization.

The first producing oil and gas well in the West Cement Field in Caddo County, Oklahoma, was completed on October 17, 1917. On February 18, 1936, Paul Sterba, and others, being the then owners of the Southwest Quarter of Section 35, Township 6 North, Range 10 West, Caddo County, Oklahoma, executed an oil and gas lease running to Gulf Oil Corporation. Gulf Oil Corporation thereafter, and in September, 1938, sold and assigned its rights under the oil and gas lease, to a depth of 6,000 feet, to The Palmer Oil Corporation, Gulf also retaining an overriding royalty. Neither said lease nor any instrument relating thereto provided for unitization or pooling of the premises with any other leases. Palmer immediately drilled several oil and gas wells on the premises, producing from zones above the Medrano Sand.

The first production of gas from the Medrano Sand Bodies of the West Cement Field occurred in October, 1936, from the Southwest Quarter of Section 36, Township 6 North, Range 10 West, and production of oil from Me-

drano Sand Bodies was first discovered in March, 1943, in the Southeast Quarter of Section 35, Township 6 North, Range 10 West.

The rights of Palmer and Sterba were vested and fixed long before the Unitization Act was passed in the year 1945, and Palmer had, in fact, by October 22, 1946, drilled six oil and gas test wells on the Sterba lease, two producing from the Medrano Sand Bodies when the Unitization Act, and its ill-begotten child, the written Plan of Unitization, sired by Phillips Petroleum Company, and other major operators, was presented for christening to the Oklahoma Corporation Commission, which, having no power but to kill or let live, gave its blessing and christened the baby "The West Cement Medrano Unit" on September 5, 1947. During the pendency of the proceedings before the Oklahoma Corporation Commission on the petition to establish the written Plan of Unitization, Palmer drilled and completed a third oil well producing from the Medrano Sand Bodies and this third well is made reference to in the opinion of the majority Court.

The written Plan of Unitization covered the several separate uncommunicable Medrano Sand Bodies under an area containing approximately 3700 contiguous surface acres, extending from the southeast to the northwest, in excess of five miles, with greatest width from north to south of approximately three and one-half miles. The Sterba-Palmer lease is near the center and in the most productive portion of the unit area.

Although Palmer's surface ownership was only approximately 4% of the unit surface area (not being a sufficient per cent to protect itself and any of the provisions of either the Unitization Act or the Plan of Unitization), yet the division of interest formula used in connection with the written Plan of Unitization shows that Palmer owned a very valued property right in excess of 5,000,000 barrels of oil in place under its lease, and was under the Plan originally allowed 5.145% of the production from the unit area, which, after the drilling and completion of the third well above mentioned, was increased to 5.51614% interest,

the increase representing in excess of 175,000 barrels of oil in place.

It is Palmer's developed valuable rights in the Sterba lease and the oil and gas thereunder and the business of producing and selling the same that was completely taken away from it by the Plan of its competitors approved by Commission's Order of September 5, 1947, and placed in the hands of private parties, Palmer's competitors, which have been operating the same since December 7, 1947.

II.

The majority opinion states:

"Involved on the appeal are two major questions. One, the constitutionality of said sections of the statute which, as a whole, constitute what is known as the Unitization Act (H. B. 339 of the 1945 Oklahoma Legislature). The other, the legality of the order of the Commission if authorized under the Act to effect unitization. These questions will be considered in the order stated. . . .

"On behalf of the lessees it is contended that the Act is violative of Art. II, Sections 7, 15, 23 and 24 of the Constitution of the State of Oklahoma, and of Art. I, sec. 10, of the Fourteenth Amendment to the Constitution of the United States. For the purpose of the presentation, there is no segregation of the contentions as to each of said constitutional provisions for the expressed reason the grounds relied on have common application to all. Two grounds are relied on. One, the Act as a whole is unreasonable. The other, the Act constitutes an unauthorized delegation of legislative power."

From the above quoted portions of the majority opinion, it appears that the majority of the Court:

- o (a) misconceived the nature of the constitutional issues presented and argued by plaintiffs in error, and
- o (b) limited its consideration to the abstract provisions of the Unitization Act and did not consider the manner of

its application to the facts and circumstances of this case.

In order to eliminate any doubt in these respects, plaintiffs in error contend:

That House Bill No. 339 of the 1945 Legislature (Title 52 O. S. Supp. 1947, Secs. 286.1 to 286.17, both inclusive), known as the Unitization Act, and the Order of the Corporation Commission of Oklahoma approving the written Plan of compulsory unitization of the several Medrano Sand Bodies in the West Cement Fields, Caddo County, Oklahoma, as interpreted and applied to the operations of Palmer and other plaintiffs in error, under the undisputed and indisputable evidence in the record, is an *improper and unreasonable exercise of the police power* and thereby (1) constitutes an unlawful delegation of legislative power to private persons or groups in violation of Section I, Article 4, and Section I, Article 5, of the Oklahoma Constitution; (2) deprives plaintiffs in error of their property without due process of law, and denies plaintiffs in error the equal protection of the law in violation of Section 7, Article 2 of the Oklahoma Constitution and the Fourteenth Amendment of the Constitution of the United States; (3) impairs the obligations of preexisting contracts and takes the private property of plaintiffs in error without their consent, without compensation and for private use in violation of Sections 15 and 23, Article 2 of the Oklahoma Constitution and Article 1, Section 10 of the Constitution of the United States.

The over-all constitutional question involves not only a consideration of the abstract provisions of the Unitization Act, but the manner of its application, which includes each and all of the following considerations, none of which can be separately treated or unrelated to the whole:

- (a) The abstract provisions of the Unitization Act.
- (b) The Written Plan of Unitization formulated by Phillips Petroleum Company, and others, and which, when approved by the Commission also became law.
- (c) The Findings of Fact and Order of the Commission.
- (d) All of the facts and circumstances of the case.

III.

The majority of the Court further states:

"The substance of lessees' ground one is that the Act is unreasonable because it does not require as a condition to the establishment of the unit a finding by the Commission, that for the purpose of conservation, the application of the Act will be more effective than that of the existing laws."

"There is no contention that the standards prescribed are insufficient in any respect other than in not including the suggested findings. Therefore, it necessarily follows that the contention challenges the authority of the Legislature in dealing with matters of policy, which is a realm without the scope of judicial inquiry."

The majority of the Court, as shown by the quoted portion of its opinion, evidently concluded that the constitutional issues were limited to one ground, i. e. that the Corporation Commission could, under the provisions of the Unitization Act, apply the same and the Written Plan of Unitization, without a finding that such Unitization and Plan would accomplish greater conservation than that permitted under existing laws. It is reiterated that the issues presented and argued *were not limited to any one ground but were based on many grounds.*

The majority of the Court, as shown by the quoted portion of its opinion, stated that plaintiffs in error did not question the validity of the so-called "standards" set forth in Section 286.4 of the Unitization Act. Such statement, we respectfully present, is in error. Plaintiffs in error have at all times argued that the so-called standards were not standards at all and that the Unitization Act, as applied in this case, *was an unreasonable exercise of the police power*, because:

- (a) It had a retrospective operation and seriously disrupted existing and vested rights. (Our brief 317 and 318).
- (b) It would serve no purpose in respect to the Medrano

Sand Bodies since more than 2/3rds of the gas energy had already been exhausted. (Our brief 317-318).

(c) It could not be any more effective for conservation purposes than the general conservation laws. (Our brief 318-321).

(d) The so-called "standards" set forth in Section 286.4 are too broad, vague, and unspecific to constitute any guide to the Commission. (Our brief 318-321).

(e) It did not become effective unless proceedings were initiated by at least 50% of lessees of surface area who not only had the exclusive power to initiate the proceedings, but also formulated and presented the Written Plan of Unitization. (Our brief 320).

(f) The Unitization Act and the Written Plan approved could be nullified within sixty days by 15% of the lessees of the surface area. (Our brief, 320).

(g) The Unitization Act and the Written Plan of Unitization in this case was designed in the interest of the major operators who could always control the formulation, application and operation of the law. (Our brief, 320-321).

(h) The Unitization Act provides not for mere rules and regulations, but is the definite taking over of the management and control of large oil fields at the will of certain percentages and without the consent of unwilling minorities, which constitutes an annihilation of the rights of small operators. (Our brief 326, 330).

In fact, the constitutional issues are not limited to the above contentions.

For instance, Mr. Justice Welch, in his well reasoned and able dissenting opinion, sets forth and discusses many constitutional objections which are apparent from the record, and by reference we wish to incorporate the contents of his opinion and the dissenting opinions of Mr. Justice Davison and Mr. Justice O'Neal herein.

IV.

In order that there may be no further misunderstanding in respect to the constitutional issues raised, plaintiffs in error desire to amplify some of the more important constitutional issues which are apparent from the record, and were presented by brief and oral argument.

(A) The majority of the Court stated in its opinion:

"No rights have been exercised under the 15% provision of Section 286.6 though its validity is questioned here. It is unnecessary to determine the constitutionality of this provision at this time. The same is true of the 10% provision of Section 286.11 providing for reconsideration by the Commission of the Plan and operation and fixed correlative rights thereunder. These undetermined questions are reserved."

To say that it is unnecessary to determine the constitutionality of this provision at this time with reference to the fifteen percent provision of Section 286.6 constitutes an evasion of the construction of the statute, because it is the Unitization Act as a whole, as applied in this instance in conjunction with the Plan of Unitization conceived by private parties, that destroys and violates the constitutional rights of plaintiffs in error. While the pronounced purpose of the Act (Sec. 286.1) may be laudable, the subsequent portions of the Act and of the Plan of Unitization—its ill-begotten child—are disastrously destructive of the constitutional rights of plaintiffs in error. Such a statute and such a Plan, when so considered, are not unlike an egg. It cannot be part good and part bad. In this instance, it is all bad.

It was never contended by any party to these proceedings that Section 286.6 or Section 286.11, or any other section, could be separated from the Unitization Act as a whole, despite the provision of Section 286.16. All parties understood the Unitization Act as being a special and exceptionally drastic type of legislation, which would have a separate and different application, depending upon the

form of Written Plan of Unitization, to each different oil field in the State of Oklahoma, if applied. Since this exceptionally drastic type of legislation, where applied, would necessarily have a continuous and day to day application, it should not be considered piecemeal, but as a whole.

The question of separability having appeared in this for the first time in the opinion of the majority of the Court, petitioners in error urge that it is only right and proper that they should have a full opportunity to present and argue the question of separability.

The majority of the Court, having disregarded Section 286.6 (15% provision) and Section 286.11 (10% provision), assuming erroneously said provisions are not in issue and separable, it must be assumed that the majority of the Court would likewise disregard Section 286.12 (15% provision on enlarging unit) on the same ground. Not anticipating such lack of the construction of the express provisions of the statute, plaintiffs in error seriously urge a rehearing so that the majority of the Court can carefully consider similar issues involving control by private parties on a percentage basis under the express terms and provisions of the written Plan of Unitization, as follows:

(1) The Order of the Commission and the written Plan of Unitization could have been nullified merely by the failure of the Unit Committee by a vote of $66\frac{2}{3}$ percent to take over operations under the unit within three months from the date of the Order. (See Section 9 of the written Plan). In fact the Unit Committee, in taking over the unit operations on December 7, 1947, barely escaped this nullification by two days. Will the majority of the Court say that this provision of the Plan is ~~not~~ in issue and separable?

(2) The day to day operations under the unit are not supervised or controlled by the Corporation Commission, but are handled by the Unit Operator, subject to vote of $66\frac{2}{3}$ percent of the Unit Committee, except on the question of removing the Unit Operator, in which event a 75 percent vote is required. Here again, a percentage in

interest controls. Is this express provision of the Plan to be held not in issue and separable?

(3) Sections VIII, XIV and XV of the Plan of Unitization permit the Unit Operator, subject to 66 $\frac{2}{3}$ rd's percent vote of the Unit Committee, to produce all of the oil from the unit from any one lease and to abandon such depleted lease. Is this provision not in issue and separable?

(4) The Unit Operator may produce oil disproportionately from the Palmer-Sterba lease for the benefit of the other leasehold owners within the area and then, subject to vote of 66 $\frac{2}{3}$ rd's percent of the Unit Committee, abandon from the unit such other leases as have not been depleted by production, the owners of such abandoned leases gaining participation in the production from the Palmer-Sterba wells and the return of their own undepleted leases. Actually, the Unit Operator has produced oil disproportionately from the Palmer-Sterba lease, producing up to 11 percent of the total unit production (see Application for Writ of Prohibition) from this one lease, whereas Palmer's unit assigned interest in the total unit production is approximately 5.5 percent. Is this control by percentage not in issue and separable?

(5) Under Sections XV and VIII of the Plan of Unitization the Unit Operator, upon vote of 66 $\frac{2}{3}$ rd's percent of the Unit Committee, can incur any expense its pleases in the further development or operation of the unit, drill, plug or abandon any well or wells it desires, may abandon or change all method or methods of operation in whole or in part at any time, may completely abandon the unit, dissolve and wind up its affairs at any time. Are these express provisions of the Plan of Unitization not in issue and separable?

Although the majority of the Court has disregarded the arbitrary percentage provisions of the Unitization Act referred to above, certainly the majority of the Court, upon further consideration, cannot disregard the arbitrary and unreasonable percentage provisions as set forth in the written Plan of Unitization. The written Plan of Unitization is an unreasonable exercise of the police power, by

reason of the fact that a certain percentage of the Unit Committee, as private individuals, have the power to exercise arbitrary and unreasonable power without limitation. In other words, the compulsory unitization is not a unit born of or controlled by provisions of the law, but rather a unitization depending upon the will of private individuals who control percents as stated of the vote, of the Unit Committee.

(B) The Unitization Act applies only upon a petition being filed by 50 percent (meaning 50 percent of the surface area) of the lessees who also formulate and present with the petition, the written Plan of Unitization. The Corporation Commission cannot breathe the breath of life into the Unitization Act, or any Plan of Unitization thereunder; this can only be done by 50 percent of the lessees in the area of the assumed common source of supply. In other words, certain percentages of private parties not only initiate the proceedings, but actually formulate the law which is to control a particular oil and gas field. This is not only discrimination, it is an unauthorized delegation of authority (legislative and the exercise of police power), to private individuals. The majority of the Court, in its opinion with reference to this question, states:

"In the first place the power so granted can neither establish or disestablish the unitization when established because the power of establishment rests with the Corporation Commission. In such situation there is not a trace of legislative power exercised."

We submit that the quoted portion of the opinion is an incorrect interpretation of the statute. The Corporation Commission has no power to initiate the proceedings, nor to formulate the Plan of Unitization. If the Corporation Commission rejects the Plan, nothing is accomplished. Therefore, the only real authority of the Corporation Commission is to apply the Unitization Act in accordance with the Plan petitioned for and submitted by 50 percent of the lessees by area. This is far different than the matter of determining whether certain legislation should become

effective upon certain conditions. Since this case was argued before the Supreme Court, an annotation on the delegation of authority to private individuals has been published in 3 ALR (2d) 188. This annotation clearly shows that where a percentage of private individuals not only initiate but formulate the legislation, the same is invalid and constitutes the most vicious type of unauthorized delegation of power to private individuals.

(C) The basic fact or major premise permitting conservation legislation which involves the adjustment and protection of correlative rights, is the existence of a *single common source of supply*. Therefore, if the Unitization Act did not have the provision (Sec. 286.2) limiting its operation to a common source of supply, the Act, without more, would be definitely violative of the Constitution of the State of Oklahoma, as well as the Constitution of the United States. See *H. F. Wilcox Oil & Gas Co. v. State*, 162 Okla. 89, 19 P. (2d) 347; *Mars v. Oxford*, 32 F. 2d 134, cert. denied 280 U. S. 563, 50 S. Ct. 24, 70 L. ed. 617, and *Ohio v. Indiana*, 177 U. S. 190, 20 S. Ct. 576, 44 L. ed. 729.

There is no provision in the Act any where which expressly grants the right to the Corporation Commission to determine such basic fact or major premise, namely, the existence of a single common source of supply. Nevertheless, that issue was raised by plaintiffs in error and was the most serious factual issue in the entire case.

The majority of the Court is correct in holding that the only evidence supporting the finding of the Corporation Commission that there was a single common source of supply was pure opinion evidence. In other words, the basic and fundamental fact—the existence of a single common source of supply, is, in the very nature of things, only an uncertain conclusion because it concerns a situation which may or may not exist 6,000 feet underneath the surface.

It is contended that any police power statute or regulation, the life and validity of which depends upon the determination of a fact or condition which is not susceptible of positive determination, should not be enforced upon

non-consenting parties and their private rights where there is any reasonable dispute. In this case the existence of the basic and fundamental fact is seriously in dispute and cannot be definitely proved, but merely concluded on the basis of opinion evidence. It is arbitrary and unreasonable to impose the statute and the Plan of Unitization upon the expert opinion of one witness as against the expert opinion of other witnesses equally well qualified.

(D) The division of interest formula had many unfair and unreasonable features which were argued at length. (See our brief 278-297). This division of interest formula must be considered as much a part of the Unitization Act in this case as any other express provision. The facts and circumstances concerning the application of this formula were undisputed and showed that the formula in many instances had no reasonable or scientific support in any respect. On the constitutional issues the majority of the Court gave no consideration whatever to the objections presented to this division of interest formula.

(E) Plaintiff in error contended in brief and on oral argument that all the facts and circumstances of the case had to be considered in connection with the constitutional issues. The majority of the Court again interpreted such contentions as being restricted to the sufficiency of the evidence. *This was not our intention.* There was no conflict in the known facts. The only questions were the interpretation or conclusions to be drawn from the known facts. Therefore, when the undisputed facts disclose that the Plan of Unitization was unreasonable in any respect, the whole Plan and the Unitization Act likewise became unreasonable. In other words, when it was argued in plaintiff's in error brief that there was not a single common source of supply (Brief 231-252), or that the proposed unit area had not been reasonably defined (Brief 258-269), or that the proposed Plan of Unitization was not suited to the needs and requirements of the proposed unit and unit area (Brief 269-270), or that the proposed Plan of Unitization was not fair, reasonable and equitable (Brief 277-278), or that the formula for the division of interest

was not generally fair, equitable or reasonable (Brief 278-297), or that the evidence showed that the Plan of Unitization was particularly unfair, inequitable and unreasonable as to the rights of The Palmer Oil Corporation (Brief 297-307), it was intended that these contentions would apply with equal force to the broad and general contention that the Unitization Act, as applied, (which includes the Unitization Act, the written Plan of Unitization, the Order of the Commission approving the Plan, and all other facts and circumstances), was an *unreasonable and unwarranted exercise of the police power.*

V.

The majority of the Court endeavors to distinguish the present case from the controlling decision in the case of *Carter v. Carter Coal Company*, 298 U. S. 238, 80 L. ed. 1160, and *State of Washington, ex rel. v. Roberge*, 278 U. S. 116, 73 L. ed. 210, in the following language:

"In the Carter case the donees of the power were given authority to make decisions determinable of the rights of others and in the Washington case the donees were given an arbitrary power to veto the exercise by others of their unquestioned rights. neither situation obtains herein."

We submit that the quoted portion of the majority opinion emphasizes the analogy between the present case and the Carter case and the Washington case, and shows no distinction whatsoever.

The majority opinion then quotes at length from *Currin v. Wallace*, 306 U. S. 1, 83 L. ed. 441, in an effort to show that legislative enactments may be made conditional upon the will of certain percentages in interest. The Currin case is far from being in point. In the first place, the Currin case involved legislation enacted by Congress under the commerce power, in which case equality is not required. The Supreme Court in that case, in its own opinion, stated:

"There is no requirement of uniformity in connection with the commerce power . . . undoubtedly the exercise of the commerce power is subject to the Fifth amendment . . . ; but that amendment unlike the Fourteenth, has no equal protection clause."

In the second place, the legislation in the Currin case was complete inspection legislation which, if made effective in a particular market, was entirely subject to and under the supervision of the Government.

In the case of the Unitization Act, the Plan of Unitization is formulated by a percentage of private interests, is presented by a percentage of private interests, is made effective, operated and concluded by a percentage of private interests. The only part that any Governmental Agency plays in connection with the Unitization Act is to either reject or approve the Plan submitted without any definite or certain guides or standards.

Conclusion

However laudable may be the pronounced purpose of the passage of the Unitization Act, and however the public good might possibly be served by compulsory unitization of an oil field, no public or governmental agency is empowered by the Unitization Act to create or maintain in being such a unit. Under the Unitization Act these rights are delegated solely to private parties with the exercise thereof within the voluntary discretion of the percents of interests of such private parties as expressed in the Act and in the private parties' own creation--the Plan of Unitization. This House of Babylon must crumble and fall by its own weight.

It is respectfully submitted that this Petition for Re-hearing should be granted.

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APPENDIX "C"

APPLICATION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 33336

THE PALMER OIL CORPORATION, a corporation, et al.,
Plaintiffs in Error,

v.

PHILLIPS PETROLEUM COMPANY, a corporation, et al.,
Defendants in Error.
and

No. 33708

PAUL STERBA and PAUL STERBA, JR., a minor, by and through
his father and next friend, PAUL STERBA, and THE PAL-
MER OIL CORPORATION, a corporation,

*Petitioners,**v.*

CORPORATION COMMISSION OF OKLAHOMA, et al.,
Defendants.

APPLICATION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING

Come now The Palmer Oil Corporation, Paul Sterba and Paul Sterba, Jr., a minor, by and through his father and next friend, Paul Sterba, and respectfully pray leave of Court to file second petition for rehearing in these consolidated cases, and as grounds therefor show the Court as follows:

1.

The majority opinion of the Court in holding that under this record there has been no unconstitutional delegation of legislative power has failed to differentiate between legislative enactments which fix and determine a policy of the state and simply delegate to others the enforcement of such predetermined policy in the administration of the Act and the situation here, where the propriety or advisability of determining policy with respect to a given area is dependent upon the will and caprice of a majority of affected owners.

2.

The majority opinion ignores the fact that under the terms of the Act Royalty owners are deprived of their property without due process of law. This result flows from the fact that the Act completely ignores their rights and permits the Corporation Commission, by approving a plan of unitization, to deprive them of valuable rights in a proceeding to which they are not parties, and of which no notice to them is required.

Respectfully submitted,

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BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING

POINT I

The Unitization Act Constitutes An Unwarranted and Unconstitutional Delegation of Legislative Power

In the majority opinion, the contention that the Act is unconstitutional because it constitutes an unauthorized delegation of legislative power is disposed of on the authority of cases which, in effect, hold that a legislative body, having once adopted a policy, may (1) delegate to an executive or agency the power and duty to enforce the policy, or (2) make the enforcement of the policy dependent upon the consent of a portion of the affected individuals.

The Act in question does neither. Although it contains recitations calculated to support it as an exercise of the police power, it does not fix the policy of the state. Rather, it says that the Corporation Commission may fix and determine the policy after a hearing, but jurisdiction of the Commission itself to either determine or carry out the policy is dependent upon the initiation of a request therefor by fifty per cent of the affected parties. It is perfectly clear that the Legislature has in effect said, "It may be advisable, depending upon circumstances, to subject certain producing areas to unit operation. The Legislature is not equipped with facilities to obtain the information necessary to determine the propriety of so doing. Consequently, we will vest in the Corporation Commission the power to make such determination."

Had the Legislature stopped at this point, the validity of the Act might have been sustained under the authorities cited in the majority opinion. However, the Legislature went further and made the question of determination dependent upon the will of lessees of record of fifty per cent or more of the area sought to be unitized. No case has been cited by counsel, and in our judgment none can be cited, in which a determination of legislative policy de-

pends upon the will, whim or caprice of any percentage of the affected parties.

Although put in slightly different language, Federal District Judge Akerman, in Chester C. Fosgate Co., et al. v. Kirkland, et al., 19 Fed. Supp. 152, struck down a marketing agreement entered into pursuant to the Federal Agricultural Adjustment Act, 7 U. S. C. A., Sections 601 to 610, inclusive. That Act authorized the Secretary of Agriculture to promulgate a handling order which should be binding upon all handlers of agricultural products upon the execution of an agreement signed by fifty per cent of the handlers. Although the Act provided an alternative method by which an order might be made without the agreement of the statutory fifty per cent, the Court concluded, in view of all of the provisions of the Act, such an agreement was a necessary requirement, and, in holding it to constitute an unwarranted delegation of legislative power, said:

"Since the marketing agreement must be signed by 50 per cent. of handlers, and also by the Secretary, each occupies the position of a separate branch of the legislative body. Such delegation of authority to a part of those engaged in a particular industry has lately been condemned by several decisions of the Supreme Court of the United States, and by several decisions of the State Supreme Courts."

Numerous cases are cited in support of the conclusion, after a discussion of which the writer of the opinion concludes:

"To permit the handlers of 50 per cent of the volume of any commodity to have such power in the making of a marketing agreement, which when approved by an order of some executive official shall have the force of law, is to my mind exactly what the Supreme Court said it is, namely, 'Legislative delegation in its most obnoxious form,' and in consequence, constitutes a violation of the Fifth Amendment to the Federal Constitution."

Just as it was necessary in the cited case to have, First, the concurrence, consent or agreement of fifty per cent of the parties involved, and in addition an order by the Secretary of Agriculture, under the Act here involved it is necessary to have, first, a petition filed by 50 per cent of the affected lessees, and second, an order of the Corporation Commission approving it.

Other cases to the same effect are collected in 3 A. L. R. (2d) 188. Concerning such cases the annotator says:

"Statutes which lodge the power to initiate administrative legislation on prices, wages, or hours exclusively in private groups and limit the power of the appropriate administrative agency to approval or disapproval of such legislation, in some instances without authorizing them to modify or revise it, have been held invalid as an improper delegation of legislative power in a number of cases."

Of other cases, which include those from this Court relating to price legislation, the annotator says:

"On the other hand, where a statute authorizes the appropriate administrative agency to enact, upon its own initiative, legislation on prices, wages, and hours under adequate standards fixed by the statute, it is not, merely because it authorizes also private groups to initiate such legislation, subject to the objection that it improperly delegates legislative power to private groups."

Another group of cases, in which *Currin v. Wallace*, 306 U. S. 1, heavily relied upon by the majority, falls, is discussed by the annotator, who recognizes the clear distinction between such cases and those like the case at bar. The distinction is plain and simple. As pointed out in the *Currin* case, a legislative body may place restrictions upon the operation of its own regulations by including as a condition the approval of a group of affected parties. However, as we have pointed out, the Legislature has not in this case imposed any restrictions upon the operation of

an ascertained policy, but has in effect authorized the Corporation Commission to impose restrictions contingent upon a petition therefor by a percentage of private parties. We unhesitatingly reassert that there is no case which approves such a delegation of legislative authority.

We also feel that no court should ever hold that a legislative body may delegate to another legislative body the power to adopt a policy provided that fifty per cent of the affected class desire the adoption of a policy relating to a given subject. Frankly, we think that this Court, in approving the legislation, overlooked the fact that thereunder the adoption of a policy, and not the enforcement thereof, is wholly dependent upon the wishes of fifty per cent of the affected parties, who may invest the Corporation Commission with the power so to do, or deprive it of such power, with or without reason, cause or justification.

We therefore respectfully submit that the authorities relied upon do not support the conclusion of the Court, that there are no authorities which do, and that the present majority opinion is in conflict with all well considered cases which have dealt with similar questions.

POINT II

The Act Is Violative of the Due Process Clauses of the State and Federal Constitutions

In the majority opinion, the position of royalty owners is considered only from the standpoint that they are not afforded the same right of protest as are their lessees. It is stated, however, after pointing out that they may be inaccessible and could afford little, if any, helpful information if available, "But they are granted the right of an appeal from the action of the Commission, and this case is an example of its exercise."

This treatment and disposition of the interests of the royalty owners completely overlooks the fact that whether they are accessible or inaccessible, whether they might provide helpful information, once a proceeding is initiated,

by fifty per cent of their lessees, or not, they do have extremely valuable rights which are affected by any unit plan of operation. To hold that they may be deprived of their rights and have their property taken away in a proceeding to which they are not even parties is unthinkable. No one would deny that under the unit plan here approved, many of the royalty owners have been deprived of substantial property rights. It is true that some of them, in an effort to protect their rights, by leave of the Corporation Commission, appeared and asserted them. They were able to do so only by the grace of the Commission. Under no provision of the Unitization Act are they necessary parties to the proceeding, nor is there any provision in the Act for notification of the pendency of any such proceeding. The present opinion, which so lightly brushes aside the total failure of the Act to take their rights into account, is contra to the basic concept that no person shall be deprived of his property without due process of law.

One of the latest cases in which the sanctity of property and property rights is again emphasized, is *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306. There was involved in that case a statute of the State of New York which authorized the trustee of a collective trust to procure a judicial settlement of its accounts with beneficiaries in a proceeding brought for that purpose. The only provision for notice to the beneficiaries was that publication be made in a local newspaper. The validity of the Act was challenged by a beneficiary on the ground that it was insufficient to afford due process. All of the New York Courts upheld the validity of the Act. The Supreme Court of the United States, on April 24, 1950, reversed, saying:

"We hold the notice of judicial settlement of accounts required by the New York Banking Law, Section 100-c (12) is incompatible with the requirements of the Fourteenth Amendment as a basis for adjudication depriving known persons, whose whereabouts are also known, of substantial property rights."

In support of such holding, the Court called attention to the fact that:

"In two ways this proceeding does or may deprive beneficiaries of property. It may cut off their rights to have the trustee answer for negligent or illegal impairments of their interests. Also, their interests are presumably subject to diminution in the proceeding by allowance of fees and expenses to one who, in their names but without their knowledge, may conduct a fruitless or uncompensatory contest. Certainly the proceeding is one in which they may be deprived of property rights and hence notice and hearing must measure up to the standards of due process."

As we have heretofore suggested, we think no one would even suggest that royalty owners' rights may not be or were not jeopardized and affected by the order creating the unit. As a matter of fact, we know of no more drastic legislation than that here involved. Of course, we recognize that individual interests must in many instances give way to the public good. However, private property and contractual rights should not be destroyed without the affected parties at least having an opportunity to protect them. Such an opportunity is, under our form of government, ordinarily provided by giving to the affected party "his day in court". The Supreme Court in the *Mullane* cases recognized, as do we, that oftentimes the interest of the state and that of individuals comes into conflict, and that a construction of the due process clause which would create impossible or impractical obstacles cannot be justified. However, the Court said:

"Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that 'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean*, 234 U. S. 385, 394, 34 S. Ct. 779, 783, 58 L. Ed. 1363. This right to be heard has little reality or

worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

Concerning the nature of the notice required under the due process clause, the Supreme Court, in accordance with its prior holdings, reiterated that,

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action, and afford ~~them~~ an opportunity to present their objections."

In holding that notice by publication was inadequate, the Court called attention to the fact that the trustee in most instances was aware of the names and addresses of the beneficiaries, and as to them the Court said:

"As to known present beneficiaries of known place of residence, however, notice by publication stands on a different footing. Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency."

Similarly, in the instant case, the names and addresses of royalty owners are within the knowledge of the lessees who, under the Act, so completely dominate the proceedings. It is common knowledge that in producing areas lessees who are authorized by lessors to dispose of the production know the names and whereabouts of those who are entitled to participate in the royalty. Consequently, the reasoning of the Supreme Court is clearly applicable here, and the failure of the Act to provide for such notice

deprives it of validity because violative of the due process requirement.

In this connection, for the purpose of emphasis, we call the Court's attention to the fact that the legislation involved completely ignores the rights and interests of the royalty owners. Nowhere in the Act are they accorded any consideration. As a matter of fact, they are only mentioned because under the Act their rights may be decreased. The majority opinion tacitly approves this complete disregard, because it is pointed out, "but they are granted the right of an appeal." We are aware of no case which holds or intimates that the granting of a right of appeal meets the requirement of due process. As a matter of fact, the rule is generally stated that the right of appeal is no part of due process. The reasons for giving a person his day in court certainly dispel any idea that the right to appeal may be substituted therefor. For this reason alone, then, we respectfully submit that the Act involved is fatally defective in that it authorizes the destruction and impairment of property and property rights without due process of law.

Conclusion

This case has received unusual consideration at the hands of this Court. It has been pending for more than two years. The division of the Justices is sharp and clear. For that reason, we have refrained from a detail discussion of the provisions of the Act or its effect upon the parties involved. We recognize that the majority opinion and those registering dissent have been carefully prepared and reflect the considered views of the authors. We do feel, however, that the majority opinion is in conflict with fundamental constitutional concepts, and particularly those relating to the delegation of legislative power and due process. We have attempted to point out such conflict, and respectfully submit that the majority opinion should be withdrawn and one establishing the invalidity of the legislation involved promulgated by this Court.

We therefore respectfully ask the Court for leave to file Second Petition for Rehearing, and believing that the

nature of the litigation is such that its effect is of widespread public interest, we further pray for the opportunity to further orally argue the case before this Court.

Respectfully submitted,

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APPENDIX "D"

HOUSE BILL NO. 339 OF THE 1945 OKLAHOMA LEGISLATURE

UNITIZED MANAGEMENT OF COMMON SOURCES OF SUPPLY (NEW)

Par. 286.1. LEGISLATIVE DECLARATION.--The Legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act¹ is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights, protected. Laws 1945, p. 162, Par. 1.

¹ Sections 286.1-286.17 of this title. Approved April 19, 1945. Effective 90 days after April 26, 1945 date of adjournment.

Par. 286.2. COMMON SOURCES OF SUPPLY TO WHICH ACT IS APPLICABLE.—This Act¹ shall apply only to common sources of supply of oil, oil and gas, or gas distillate in this State.

The provisions of this Act shall not apply to any common source of supply of oil, oil and gas, or gas distillate or any part or parts thereof which at the effective date of this Act are being operated by or under pressure maintenance, repressuring, or secondary recovery methods or operations, provided, that nothing contained in this Act shall prevent the voluntary inclusion and extension of areas in which are located such existing pressure maintenance, repressuring, or secondary recovery methods or operations as unit areas under the provisions of this Act. Provided this Act shall not apply to any field where the discovery well has been drilled twenty (20) years prior to the effective date of this Act. Laws 1945, p. 162, Par. 2.

Par. 286.3. JURISDICTION OF CORPORATION COMMISSION.—Subject to the limitations of this Act¹ the Corporation Commission of the State of Oklahoma, hereinafter referred to as the "Commission", is hereby vested with jurisdiction, power and authority, and it shall be its duty, to supervise the administration of this Act. Laws 1945, p. 163, Par. 3.

Par. 286.4. THE PETITION FOR AND ORDER CREATING UNIT.—If upon the filing of a petition, therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided the Commission shall find (a) that the unitized management, operation and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substan-

¹ Sections 286.1-286.17 of this title.

tially increase the ultimate recovery of oil and gas from the common source of supply; and (b) that one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; and (c) that the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (d) that such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected, it shall make a finding to that effect and enter an order approving the creation of a unit composed of the lessees and other persons who under the plan of unitization approved by the Commission are chargeable with the responsibility and cost of conducting such unitized methods of operation, development of the common source of supply or portion thereof described in the order, all upon such terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants and others, as well as the lessees. To give the Commission jurisdiction hereunder, the petition shall be filed by, or with the authority of, lessees of record of fifty percent (50%) or more of the area of the common source of supply or portion thereof sought to be unitized. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the Commission as hereinabove provided and shall have attached thereto a recommended plan of unitization applicable to

such proposed unit area and which the petitioners consider to be fair, reasonable and equitable. Laws 1945, p. 163, Par. 4.

Par. 286.5. UNIT AREA AND PLAN OF UNITIZATION.—The order of the Commission shall define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

Each unit and unit area shall be limited to all or a portion of a single common source of supply. Only so much of a common source of supply as has reasonably been defined by actual drilling operations may be so included within the unit area.

A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created, and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

The plan of unitization for each such unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions and requirements found by the Commission to be reasonably necessary or proper to effectuate or accomplish the purpose of this Act, and subject to the further requirements hereof, each such plan of unitization as the parties thereto may agree upon shall be fair, reasonable and equitable, and among other proper and equitable provisions, shall provide:

(a) For the efficient unitized management or control of the further development and operation of the unit area or the recovery of oil and gas from the common source of supply affected. Under such a plan the actual operations within the unit area may be carried on in whole or in part by the several lessees of leases within the unit area, sub-

ject to the supervision and direction of the unit, or may be conducted in whole or in part by the unit or some particular operator or operators of a lease or leases in the approved unit area dependent upon what is most beneficial or expedient. The designation of the operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the Commission.

(b) The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately-owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately-owned tracts to produce or receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof. A separately-owned tract's fair, equitable, and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in this Act shall mean and include all oil and gas produced from a unit area from and after the effective date of the order of the Commission approving the creation of the unit regardless of the well or tract within the unit area from which the same is produced;

(c) The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations.

Upon and subject to such terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provisions shall be made in the plan of unitization for carrying or otherwise financing lessees who are unable to meet their financial obligations in connection with the unit.

(d) The procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in that project as of the effective date of unit operations.

(e) For the creation of an operating committee to have general over-all management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards or officers to function under authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards or officers and prescribing their tenure and time and method for their selection. Each lessee within the unit area shall be entitled to representation on the operating committee and shall have a vote equal to the proportionate interest of such lessee in the unit, provided, where the voting interest of a lessee is such as to control the action taken by the committee, the vote of such lessee shall not serve to carry or defeat action by the committee unless such vote is supported by the vote of a majority of the remaining lessees.

(f) The time when the plan of unitization shall become and be effective;

(g) The time when and conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up. Laws 1945, p. 164, Par. 5.

Par. 286.6. OBJECTION TO CREATION OF UNIT.—If at any time after the filing of a petition for the creation of a unit and within sixty (60) days after the entry of an order by

the Commission approving the creation of the same, lessees of record of fifteen percent (15%) or more of the proposed unit area, if prior to the entry of the order by the Commission, or lessees of record of fifteen percent (15%) or more of the unit area as defined by the approved plan of unitization and order of the Commission, if after the entry of such order, shall file written protest with the Commission against the creation of the unit, the Commission shall vacate all action of any kind theretofore taken and dismiss the proceedings for the creation of such unit. The fact that a lessee joined in the petition seeking authority to create the unit or otherwise participated in any of the steps thereafter taken with the view of creating the same, shall not preclude such lessee from filing a protest pursuant to the provisions of this Section. Laws 1945, p. 165, Par. 6.

Par. 286.7. PROCEDURE AND APPEAL.—Except as otherwise herein expressly provided, all proceedings had under this Act¹ including the filing of petitions, the giving of notices, the conduct of hearings and other action taken by the Commission shall be in the form and manner and in accordance with the procedure and procedural requirements provided in Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, or any amendment thereof with reference to proceedings thereunder. Such additional notice shall be given as may be required by the Commission. The Conservation Officer, his assistant and deputies and the Conservation Attorney shall act without additional compensation as technical advisors to the Commission to the extent that the Commission may require. Any person aggrieved by any order of the Commission made pursuant to this Act may appeal therefrom to the Supreme Court of the State of Oklahoma upon the same conditions, within the same time and in the same manner as is provided in said Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, for the taking of appeals from the orders of the Commission made thereunder, except in any such ap-

¹ Sections 286.1-286.17 of this title.

peal the Commission shall be impartial, inactive and shall not be represented directly or indirectly by the Conservation Attorney, the Attorney General or any other public official or person. The Supreme Court on appeal shall have jurisdiction and authority and it shall be its duty to review the record of proceedings and transcript of evidence and to consider the validity of the order of the Commission appealed therefrom. On appeal the order of the Commission appealed from shall be regarded as *prima facie valid, fair, reasonable and equitable*, but if the order is found to be contrary to the clear weight of the evidence, in any one of such respects, the same shall be vacated and set aside and the cause referred to the Commission for further proceedings not inconsistent with the judgment of the court; otherwise the said order shall be affirmed.

In addition to any other remedy provided in this Act any interested person, firm or corporation within a unit area feeling himself aggrieved by any order of the Commission or the action of a unit thereunder, may at any time institute a suit in the District Court of the County in which the greater part of the unit area is located, as in other civil suits in equity, against the other lessees within the unit and in such suit have his rights and equities determined. Any person aggrieved by the judgment entered in such an action may appeal therefrom to the Supreme Court of the State of Oklahoma in the time and manner as appeals are taken in other civil actions. To the extent possible under existing laws the Supreme Court shall give precedence to all such appeals in the hearing and disposition thereof. Laws 1945, p. 165, Par. 7.

Par. 286.8. OPERATIONS IN VIOLATION OF PLAN OF UNITIZATION UNLAWFUL.—From and after the effective date of an order of the Commission approving the creation of a unit and approving the plan of unitization applicable thereto the drilling of any well into or the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in such

plan of unitization shall be unlawful and is hereby prohibited. Laws 1945, p. 166, Par. 8.

Par. 286.9. THE NATURE, PURPOSES AND FUNCTIONS OF UNITS, AND LIABILITY OF OWNERS OF OIL AND GAS RIGHTS THEREIN FOR UNIT EXPENSE.—Each unit created under the provisions of this Act¹ shall be a body politic and corporate, capable of suing, being sued and contracting as such in its own name. Each such unit shall be authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of this Act and by the plan of unitization.

The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at all times be several and not joint or collective and in no event shall a lessee or other owner of the oil and gas rights in the separately-owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed or otherwise charged to his interest in such separately-owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for in this Act.

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the lease-hold interest only in the unitized common source of supply (exclusive of a one-eighth (1/8) royalty interest) in and to each separately-owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately-owned tract. The interest of the lessee or other persons who by lease, contract or otherwise are obligated or responsi-

¹ Sections 286.1-286.17 of this title.

ble for the cost and expense of developing and operating a separately-owned tract for oil and gas in the absence of unitization shall, however, be primarily responsible for and charged with any assessment for unit expense made against such tract and resort may be had to overriding royalties, oil and gas payments, royalty interests in excess of a one-eighth ($\frac{1}{8}$) of the production, or other interests which otherwise are not chargeable with such cost, only in the event the owner of the interest primarily responsible fails to pay such assessment or the production to the credit thereof is insufficient for that purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which under the plan of unitization is not primarily responsible therefor pays in whole or in part the amount of an assessment for unit expense for the purpose of protecting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest, the owner thereof shall to the extent of such payment or deduction be subrogated to all of the rights of the unit with respect to the interest or interests primarily responsible for such assessment. A one-eighth ($\frac{1}{8}$) part of the unit production allocated to each separately-owned tract shall in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to, the royalty owners free and clear of all unit expense and free of any lien therefor. Laws 1945, p. 166, Par. 9.

Par. 286.10. PROPERTY AND CONTRACT RIGHTS.—Property rights, leases and other contracts, and all rights and obligations shall meet the provisions and requirements of this Act¹ and to any valid and applicable plan of unitization or order of the Commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

Nothing contained in this Act shall be construed to require a transfer to or vesting in the unit of title to the separately-owned tracts or leases thereon within the unit

¹ Sections 286.1-286.17 of this title.

area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor shall the unit be regarded as owning the unit production. The unit production and the proceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold or possess shall not be acquired, held or possessed by the unit for its own account but shall be so acquired, held and possessed by the unit for the account and as agent of the several lessees and shall be the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use or disposal of the same in the proper conduct of its affairs, and subject to any lien the unit may have thereon to secure the payment of unit expense.

The amount of the unit production allocated to each separately-owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately-owned tract, shall for all intents, uses, and purposes be regarded and considered as production from such separately-owned tract, and, except as may be otherwise authorized in this Act, or in the plan of unitization approved by the Commission, shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production for such separately-owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately-owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately-owned tract shall be delivered in

² Probably should read "from".

kind to the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners subject to the right of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such portions of the gas for operating purposes as may be provided in the plan of unitization.

Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the development thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately-owned tract within such unit area. Laws 1945, p. 167, Par. 10.

Par. 286.11. AMENDMENTS TO PLAN OF UNITIZATION.—In any proceeding hereunder in which an order is entered creating a unit, the Commission shall retain jurisdiction thereof and of all parties in interest for the purpose of amending the plan of unitization from time to time whenever by reason of changed conditions or otherwise for good cause shown it is made to appear that such amendment is necessary or proper. Such an amendment may be made only upon the petition of lessees of record of ten percent (10%) or more of the unit area. Any amendment to a plan of unitization made pursuant hereto shall be effective prospectively only from and after the date on which the order providing for such amendment shall become final. The procedure for any such amendment including the filing of a petition, the giving of notice and conduct of the hearing shall be the same as that required for the creation of a unit and the adoption of a plan of unitization in the first instance, insofar as applicable. Laws 1945, p. 168, Par. 11.

Par. 286.12. ENLARGEMENT OF UNITS.—The unit area of

a unit may be unitized with adjoining and contiguous portions of the same common source of supply including the unit area of another or other units, and a unit created for the unitized management, operation and further development of such enlarged unit area upon the filing of a petition therefor and after notice and hearing, in the same manner, on the same conditions, but subject to the right of lessees of record of fifteen percent (15%) or more of an existing unit area to protest, and veto such enlargement or merger, all as herein provided with respect to the creation of a unit in the first instance. Upon the creation of a larger unit embracing the unit area of one or more smaller units, the larger unit so created shall thereupon supersede such smaller unit or units. Laws 1945, p. 169, Par. 12.

Par. 286.13. PUBLIC LANDS.—The Commissioners of the Land Office, or other proper board or officer of the State having the control and management of State land, and the proper board or officer of any political, municipal, or other subdivision or agency of the State, are hereby authorized and shall have the power on behalf of the State or of such political, municipal, or other subdivision or agency thereof, with respect to land or oil and gas rights subject to the control and management of such respective body, board, or officer, to consent to or participate in any plan or program of unitization adopted pursuant to this Act.¹ Laws 1945, p. 169, Par. 13.

Par. 286.14. NO INCOME OR PROFIT SUBJECT TO TAXATION.—Neither the unit production or proceeds from the sale thereof, nor other receipts shall be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts shall be the income of the several persons to whom or to whose credit the same are payable under the plan of unitization. To the extent the unit may receive or disburse said receipts it shall only do so as a common administrative agent of the persons to whom the same are payable. Laws 1945, p. 169, Par. 14.

¹ Sections 286.1-286.17 of this title.

Par. 286.15. **DEFINITIONS.**—For the purposes of this Act,¹ unless the context otherwise requires:

(a) The term "lessee" refers not only to lessees under oil and gas leases but also to the owners of unleased lands or mineral rights having the right to develop the same for oil and gas.

(b) Any reference to a separately-owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas shall have reference thereto only in relation to the common source of supply or portion thereof embraced within the unit area of a particular unit.

(c) The phrase "oil and gas" shall refer not only to oil and gas as such in combination one with the other, but shall have general reference to oil, gas, casinghead gas, casinghead gasoline, gas-distillate, or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source of supply of oil, oil and gas or gas-distillate.

(d) The term "person" shall mean and include any individual, corporation, partnership, common law or statutory trust, association of any kind, the State of Oklahoma or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind, or any other entity or being capable of owning an interest in and to a common source of supply of oil and gas.

(d) The term "unit expense" shall include and mean any and all cost, expense, or indebtedness incurred by the unit in the establishment of its organization, or incurred in the conduct and management of its affairs or the operations carried on by it, authorized by the approved plan of unitization. Laws 1945, p. 169, Par. 15.

¹ Sections 286.1-286.17 of this title.

Par. 286.16. CONSTRUCTION OF ACT.—The provisions of this Act¹ are declared to be severable, and, if any section, sentence, clause or part thereof be held invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not be construed to affect the validity of the remaining provisions of this Act. Laws 1945, p. 170, Par. 16.

Par. 286.17. UNITIZATION AGREEMENTS NOT VIOLATIVE OF ANTI-TRUST LAWS OR IN RESTRAINT OF TRADE.—No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties, entered into pursuant hereto or with a view or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate any of the statutes of this State prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce. Laws 1945, p. 170, Par. 17.

¹ Sections 286.1-286.17 of this title.

APPENDIX "E"

ORDER NO. 20289 OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, INCLUDING ITS FINDINGS OF FACT AND THE WRITTEN PLAN OF UNITIZATION BY SUCH ORDER APPROVED

**REPORT AND ORDER PLAN OF UNITIZATION OF
WEST CEMENT MEDRANO UNIT**

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF
OKLAHOMA**

Cause CD No. 1308 Order No. 20289

**IN THE MATTER OF THE PETITION FOR THE CREATION OF THE
WEST CEMENT MEDRANO UNIT HAVING FOR ITS PURPOSE
THE UNITIZED MANAGEMENT, OPERATION AND FURTHER DE-
VELOPMENT OF THE WEST CEMENT MEDRANO COMMON
SOURCE OF SUPPLY OF OIL AND GAS IN CADDO COUNTY,
OKLAHOMA, THE DEFINING OF THE UNIT AREA THEREOF
AND THE PRESCRIBING OF THE PLAN OF UNITIZATION AP-
PLICABLE TO SUCH UNIT AND UNIT AREA.**

REPORT AND ORDER OF THE COMMISSION

The above styled and numbered cause is a proceeding brought by the lessees of a substantial majority of the acreage in the West Cement Medrano oil and gas pool or field located in Caddo County, Oklahoma, seeking to unitize the management, operation and further development of said field for the purpose of preventing the waste of oil and gas and of substantially increasing the ultimate recovery of oil therefrom, all as authorized and provided for in H. B. 339 of the 1945 Oklahoma Legislature. The bringing of this proceeding followed months of cooperative study

of the field and of the benefits of unitization engaged in by substantially all of the operating lessees in the pool and in which all were invited to participate. The original petition herein, attached to which was a recommended Plan of Unitization applicable to said field, was filed October 23, 1946.

Pursuant to order of the Commission, said petition was first set for hearing November 7, 1946, at 10:00 o'clock, A. M. in the Commission Courtroom in the State Capitol Office Building at Oklahoma City, Oklahoma, and notice thereof published once a week for two consecutive weeks in a newspaper of general circulation in Caddo County, in which West Cement Medrano field is located, and for the same time in a newspaper of general circulation in Oklahoma County, Oklahoma.

At the time and place so fixed for said hearing, a large number of persons were present, not only lessees but also land owners, royalty owners and other persons having varying interests in the West Cement Medrano Field. A group of lessors and royalty owners, represented by their attorney, Reford Bond, Jr., advised the Commission that they had not had sufficient time within which to study the proposed Plan of Unitization and requested a continuance of the hearing. The granting of the continuance was agreed to by the petitioners who, through their attorneys, publicly announced that during the period of the continuance they stood ready and willing, upon request, to furnish any party in interest any factual data pertaining to the West Cement Medrano field, and the proposed Plan of Unitization available to petitioners. At the same time Magnolia Petroleum Company, an operating lessee in the field, asked leave to sign the petition as one of the petitioners thereto. Whereupon, the Commission continued said hearing to December 9, 1946, at 10:00 o'clock A. M. at the same place, permitted the Magnolia Petroleum Company to sign the petition as one of the petitioners, directed that the petition be refiled and ordered that notice of the refiling of the petition and of the date to which said hearing was continued be published in the same manner and for the same

time as was the first notice of hearing, all of which was done.

In advance of said original hearing date, as is its usual custom in oil and gas matters, the Commission mailed mimeographed copies of the petition, together with information as to the time of hearing, to all persons on its established mailing list, which includes all operating lessees within the West Cement Medrano field as well as number of royalty and other interest owners.

The hearing of said cause was commenced at the time and place so fixed, namely, December 9, 1946, at 10:00 o'clock A. M., in the Commission Courtroom in the Capitol Office Building in Oklahoma City, Oklahoma, and continued at the same place throughout all the following days, to wit: December 9 and 23, 1946; January 6 and 7; February 25, 26, 27 and 28; May 13, 14, 15, 16, 20, 21, 22 and 23; July 15, 16, 17, 18, 22, ~~23, 24 and~~ 25; all in 1947, except for said first mentioned dates in 1946. The continuance of said hearing from time to time was by proper orders of continuance. At said hearing the petitioners and subscribers to the proposed Plan of Unitization were represented by the following named attorneys: W. H. Brown, Russell G. Lowe, Booth Kellough, W. R. Wallace and R. M. Williams. The protestant, the Palmer Oil Corporation appeared by its attorneys, ~~Mark~~ H. Adams and Charles Jones, of Wichita, Kansas. Protestants Tom Potter, Clyde Kahle, Maud Kahle, Bob White Oil and Gas Company and a group of approximately 65 lessors and royalty owners appeared by their attorney, Reford Bond, Jr. The protestants B. E. Johnson, Virginia McIntyre and M. L. McIntyre appeared by their attorney, Jack Page. A number of royalty and other interest owners wrote letters to the Commission urging the granting of the petition, all of which appear in the record. Other royalty owners and various parties in interest were present at the hearing from time to time but took no part.

At the hearing everyone who desired to do so, regardless of the interest of such person, was given full opportunity to offer any and all competent evidence that any

such person chose to offer, either for or against the recommended Plan of Unitization or by way of amendment thereto, and to otherwise be heard in regard thereto. The evidence so introduced consisted of extensive geological, engineering and other proof concerning the history, discovery, development, operation and present condition of the West Cement Medrano field and the probable results obtainable both under present competitive methods of operation and through the unitization thereof; proof both pro and con as to the fairness, reasonableness and equitableness of the recommended Plan of Unitization; and proof by protestants with respect to certain amendments which they claim should be made in said Plan.

In addition to the knowledge gained from the evidence introduced at said hearing, the Commission has had, over a period of time, a general knowledge of the West Cement Medrano field and of conditions existing therein gained through the exercise by it of its jurisdiction over such field under the Conservation Laws of the State of Oklahoma, dating from the discovery thereof. As a result of the evidence, statements and arguments introduced and made in the hearing here under consideration, and by reason of its general knowledge of said West Cement Medrano field, as aforesaid, the Commission is of the opinion that it has sufficient knowledge and information upon which to base a proper order in this cause.

In addition to the proceedings and notices aforesaid, further mention is here made of the fact that during the course of said hearing, The Palmer Oil Corporation drilled and completed an additional well on a lease owned by it in the aforesaid field, necessitating a relatively slight change in the percentage of interests of the several separately owned tracts in the field shown in "Exhibit B" attached to the recommended Plan of Unitization, and also necessitating the inclusion of such additional well in "Exhibit D" attached to said Plan of Unitization. Also as a result of the time consumed by the hearing, it was considered desirable by the petitioners and subscribers to the recommended Plan of Unitization to strike from Section

XXVII of said Plan the time limitation therein contained. To accomplish the aforesaid objectives, the petitioners during the course of the hearing asked and without objection were granted leave to amend the petition accordingly. In order to permit persons not present at the hearing an additional opportunity to be heard with respect to said amendment, the Commission set the petition as amended for further hearing on July 29, 1947, at 10:00 o'clock A. M., in the Commission Courtroom in the State Capitol Office Building at Oklahoma City, Oklahoma, and caused notice of the amendment to said petition and of the hearing thereon to be published, ten (10) days prior to said hearing date, in a newspaper of general circulation in Oklahoma County, Oklahoma. At the time and place so named, the further hearing was had in said cause upon the petition as amended, no one appearing, however, in opposition thereto.

Now, on this 5th day of September, 1947, the Commission having previously taken said cause under advisement and having considered the matter in conference and each of the Commissioners being well and fully advised, the Commission makes the following findings of fact, conclusions of law, and enters the following order authorizing and approving the creation of the West Cement Medrano Unit, defining of the Unit Area thereof and prescribing of the Plan of Unitization applicable to such Unit and Unit Area.

Findings of Fact and Conclusions of Law

The Commission finds:

1. That notice of the filing of the original petition, the refiling thereof after being signed by the Magnolia Petroleum Company, the filing of the amendment thereto and the time, place and purpose of the hearings on the petition, both as originally filed and as amended, was given in all respects as by law required, and that the Commission has jurisdiction of the subject matter of said petition and amended petition and of all persons interested therein, and has jurisdiction to make and promulgate the herein-after prescribed order.

2. That the lands (hereinafter designated and referred to as the "Unit Area") located in Caddo County, Oklahoma and outlined by the hatched line on the map marked "Exhibit A" and attached to the Plan of Unitization attached to and made a part of this order, are underlaid with an oil and gas-bearing formation known as the Medrano sandstone found at a depth ranging from approximately 4500 feet along the North and Northeast side of the Unit Area and an approximate depth of 6241 feet along the South and Southwest side of the Unit Area; that a gas cap exists along the high part of the producing formation from which the primary production is gas, whereas, the primary production from wells drilled lower on the structure is oil; that the average sand or formation thickness in the gas cap area or zone is approximately 65 feet; that the average sand or formation thickness in the oil area or zone is approximately 95 feet; that the said Medrano sandstone underlying said above described lands as aforesaid constitute a single common source of supply of oil and gas, all parts of which are permeably connected so as to permit the migration of oil or gas or both from one portion of said common source of supply to another wherever and whenever pressure differentials are created as a result of the production or operations for the production of oil or gas from said producing formation; that although faults are known to exist in parts of said common source of supply said faults do not prevent substantial migration of oil and gas and of pressures from one part of said common source of supply to another; that said common source of supply of oil and gas has heretofore been designated by the Commission and is generally known as the West Cement Medrano pool.

3. That said common source of supply of oil and gas was first discovered in October, 1936 by the drilling and completion of the Magnolia Petroleum Company's Medrano No. 6 gas well in the SE/4 of the NE/4 of the SW/4 of Section 36, Township 6 North, Range 10 West, Caddo County, Oklahoma; that the presence of oil in said common source of supply of oil and gas was first discovered in March, 1943 by the drilling and completion of the Stephens

Petroleum Company's Pierson No. 1 oil well in the SE/4 of the SW/4 of the SE/4 of Section 35, Township 6 North, Range 9 West, Caddo County, Oklahoma; that at the present time there are 37 oil wells and 19 gas wells producing from said common source of supply of oil and gas.

4. That the outer boundaries of said common source of supply of oil and gas underlying and by this Order included within the aforesaid Unit Area have been reasonably defined by actual drilling operations, both by the drilling of wells within and the drilling of wells outside said Unit Area; that said Unit Area consists of approximately 3700 acres of land.

5. That the lands embraced within the aforesaid Unit Area are divided into a large number of individual tracts of varying size and shape, and owned in severalty by a large number of different individuals, firms and corporations owning varying interests therein, including oil and gas leasehold interests, royalty interests and various and sundry other rights and interests; that the several oil and gas leases covering said lands are owned by not less than 25 different lessees; that the royalty interests under said land are divided among and owned by several hundred royalty owners; that the petitioners in this cause are lessees of record of 73.32% of the area of the common source of supply sought to be unitized; that the subscribers to the recommended Plan of Unitization and other lessees favoring its adoption are lessees of record of approximately 94% of the area of said common source of supply; that the lessees appearing at the hearing and protesting the granting of the petition herein are lessees of approximately 4% of the proposed Unit Area; that the lessees of the remaining percentage of the Unit Area have not appeared for or against the granting of the petition herein.

6. That without the unitization of said West Cement Medrano common source of supply of oil and gas the only method whereby said pool can be feasibly and effectively operated and produced for the recovery of oil and gas therefrom is by and under individual competitive pressure depletion methods of operation, the methods now being used in the pool, that is to say, by treating each separately

owned tract or lease as a separate unit for operating and production purposes and depending on the natural energy in the producing formation to move what oil and gas can be moved thereby out of the formation to the well bore where it can be produced; that the principal natural energy mechanism in said pool is gas in solution with the oil coupled with a gas cap expansion; that under present competitive methods of operation, treating each tract or lease as a separate operating unit, there has been and still continues to be a disproportionate, inequitable and wasteful utilization and dissipation of the gas energy in the pool by certain tracts to the detriment and disadvantage of other tracts and to the injury of the pool as a whole; that by and under the best known competitive pressure depletion methods of operation not more than 25% or approximately 24 million barrels of the 97 million barrels of oil originally in place in the reservoir can be economically recovered, leaving the remaining 75%, or approximately 73 million barrels of oil in the ground unrecovered and unrecoverable except through and by means of unitization of the pool and the adoption of unitized methods of operation therein; that to permit the owners of gas wells and high gas-oil ratio wells to continue to produce such wells will result in robbing the oil wells of gas energy required to produce the oil; that to shut in the gas wells and the high gas-oil ratio wells without permitting the owners thereof to share in the oil and gas production from the oil wells, would deprive the owners of the gas wells of their fair share of the production from the pool; that the value of the recoverable oil exceeds many times the market value of the gas; that the return to the reservoir of the gas produced from the oil to supplement the remaining natural gas energy and retard the decline in reservoir pressure and perhaps the injection at some later date of water low on structure is desirable and necessary to obtain the greatest ultimate recovery of oil from the pool, but which cannot be done in the absence of unitization because of the migratory nature of the injected gas or water and the effect that the injection thereof into the reservoir would have upon properties in the pool other than the

property on which the gas or water is injected and upon the pool as a whole.

7. That by and through the unitization of the proposed Unit Area and the unitized management and operation and further development thereof as a unit, all as set out and provided for in the Plan of Unitization hereto attached, full use can be made of the gas energy in the reservoir to the mutual advantage of all the owners of the said common source of supply of oil and gas, that waste of large volumes of oil and gas can be prevented, gas can and will be returned to the reservoir to supplement the natural reservoir energy, water encroachment, either natural or artificial, on the lower side of the pool can be properly controlled and utilized, substantially more oil, amounting to many millions of barrels, can be recovered from the common source of supply than can otherwise be recovered, a more equitable distribution of the recoverable oil and gas can be had as between the several owners of the pool and the correlative rights of the several owners can be more fully protected.

8. The unitization and unitized management and operation and further development of said common source of supply as a unit is reasonably necessary to effectively carry on the unitized methods of operation described in the proposed Plan of Unitization.

9. That any one or all of the unitized methods of operation described in the attached Plan of Unitization as applied to the common source of supply underlying and included within the Unit Area are feasible, will prevent waste, and will, with reasonable probability, result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; that the estimated additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered; that such unitization and the adoption of any one or more of such unitized methods of operation is for the common good and will result in the general advantage to the owners of the oil and gas rights in, and to the common source of supply thereby affected.

10. That neither said West Cement Medrano common source of supply of oil and gas nor any part or parts thereof were being operated by or under pressure maintenance, repressuring or secondary recovery methods of operation as of the effective date of H. B. 339 of the 1945 Oklahoma Legislature.

11. That the Plan of Unitization attached to this order and which is made a part hereof, is one suited to the needs and requirements of the West Cement Medrano Unit, the creation of which is hereby authorized and approved, taking into account all the facts and conditions found by the Commission to exist in respect thereto; that said Plan of Unitization is fair, reasonable and equitable and contains all the terms, provisions, conditions and requirements reasonably necessary and proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalty interests, oil and gas payments, carried interests, mortgagees, lien claimants, and others, as well as the lessees and such as will effectuate and accomplish the purposes of H. B. 339 of the 1945 Oklahoma Legislature; that said Plan of Unitization provides for the efficient unitized management and control of the further development and operation of the Unit Area for the recovery of oil and gas from the common source of supply affected; that the division of interests set forth in "Exhibit B" attached to said Plan of Unitization pursuant to which the unit production is to be apportioned and allocated among and to the several separately owned tracts within the Unit Area is fair and equitable and is such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof; that the division of interest assigned to the several separately owned tracts in the Unit Area as set out in said "Exhibit B" to said Plan of Unitization is fair and reasonably representative of the value of said several tracts for oil and gas purposes and the contributing value thereof to the unit in relation to like values of other

tracts in the unit; that the basis used to arrive at said division of interest takes into account the acreage of the several separately owned tracts, the quantity of oil and gas recoverable therefrom, the location thereof on structure, the probable productivity of oil and gas from such tracts in the absence of unitization, the burden of operation to which such tracts will or are likely to be subjected, together with all other pertinent engineering, geological and operating factors as are reasonably susceptible of determination; that the manner in which and the basis, terms and conditions on which the cost and expense of the further development and operation of the Unit Area shall be financed and apportioned among and assessed against the tracts and interests chargeable therewith are fair, reasonable and equitable; that the provisions of the said Plan with respect to taking over and using the wells, equipment and other properties of the several lessees within the Unit Area, including the method of arriving at the compensation therefor and otherwise proportionately equalizing and adjusting the investment of the several lessees in the project as of the effective date of the unit operations are fair, reasonable and equitable; that the provisions of said Plan with respect to the creation of an operating committee and the powers and duties of such committee are fair, reasonable and equitable.

12. That the Plan of Unitization hereto attached in all respects conforms to and complies with the requirements of H. B. 339 of the 1945 Oklahoma Legislature.

13. That the West Cement Medrano pool is a field within the meaning of that term as used in the second paragraph of Section 2 of H. B. 339 of the 1945 Oklahoma Legislature; that the term "field" in ordinary usage has no fixed or definite meaning but is sometimes used to refer to the general area where a number of oil or gas producing formations are found and at other times used to refer to a particular common source of supply or pool; that as used by the Legislature aforesaid, the term was intended to relate to the particular common source of supply or pool sought to be unitized under the Act and not to any general area

which in a broader sense could be termed a field; that in effect said Act throughout relates to and deals only with single common sources of supply of oil and gas.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That the petition filed herein be and the same is hereby granted.
2. That the creation of the West Cement Medrano Unit as prayed in said petition be and the same is hereby authorized and approved.
3. That the Unit Area of said unit shall extend to and include all of the West Cement Medrano common source of supply of oil and gas outlined by the hatched lines on the map marked "Exhibit A" attached to the Plan of Unitization attached to this order.
4. That the Plan of Unitization hereto attached and which by reference is made a part of this order is hereby approved and shall constitute the Plan of Unitization of and for said West Cement Medrano Unit and the Unit Area of said Unit, all to the same extent and with the same force and effect as if copied herein in its entirety.
5. Nothing herein contained shall be construed as a waiver by the Commission of any of its powers or authority over the West Cement Medrano Unit or the persons comprising said unit, or the development and operation of the Unit Area thereof under the general oil and gas conservation laws of the State of Oklahoma, it being expressly recited that the Commission has and retains continuing jurisdiction over the operations carried on by the unit to the same extent that it would have jurisdiction over any other lessee or person producing oil and gas from the West Cement Medrano pool or field in the absence of unitization.
6. The Unit shall from time to time make such reports to the Commission concerning the operation by it of the Unit Area as may be requested by the Commission.

Done and performed by the Corporation Commission
at its office in the Capitol Office Building, Oklahoma City,
Oklahoma, this 5th day of September, 1947.

CORPORATION COMMISSION OF OKLAHOMA,

(Signed) REFORD BOND, *Chairman.*

(Signed) RAY O. WEEMS, *Vice-Chairman.*

(Signed) RAY C. JONES, *Commissioner.*

Attest:

(Signed) TOM McMURRAY, *Secretary.*

(SEAL)

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PLAN OF UNITIZATION OF WEST CEMENT MEDRANO UNIT

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EXHIBITS

Exhibit "A":	Map of Unit Area
Exhibit "B":	
Part I:	Percentage of Interest in Unit
Part II:	Special Provisions with respect to Allocation of Unit Production
Exhibit "C":	Accounting Procedure
Exhibit "D":	Table of Well Values

PLAN OF UNITIZATION OF WEST CEMENT MEDRANO UNIT

Know all men by these presents:

The following shall constitute the Plan of Unitization applicable to the West Cement Medrano Unit created pursuant to authority of House Bill 339 of the 1945 Legislature of the State of Oklahoma and having for its purpose the unitized management, operation and further development of the Medrano Sand common source of supply of Oil and Gas underlying the lands outlined by the hatched line on the map hereto attached and marked "Exhibit A", all to the end that a greater ultimate recovery of Oil and Gas may be had therefrom, waste prevented and the correlative rights of the respective owners protected.

I

Definitions

As used in this Plan of Unitization, the following terms and expressions are defined as follows:

- (a) "Unit" shall mean the West Cement Medrano Unit.
- (b) "Commission" shall mean the Corporation Commission of the State of Oklahoma.
- (c) "Person" shall mean any individual, corporation, partnership, common law or statutory trust, association of any kind, the State of Oklahoma or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind or any other entity capable of holding an interest in and to the Unit Area.
- (d) The pronoun "it" is used to refer to any person regardless of gender.
- (e) "Unit Production" shall mean and include all Oil and Gas produced from the Unit Area from and after the Effective Date hereof regardless of the well or tract within the Unit Area from which the same is produced.
- (f) "Lessee" shall mean any owner, in whole or in part, of an Oil and Gas Lease or any unleased mineral interest,

who alone or in association with another person or persons has the right, except for this Plan of Unitization, to explore, develop and operate a Separately Owned Tract for Oil and Gas and in so doing would be personally chargeable with a proportionate part of the cost and expense of the operation thereof. An owner of an overriding royalty interest, oil payment, carried interest, net profit contract, or other oil and gas rights of a similar nature, who is not personally chargeable with the cost and expense of operations, shall not be regarded as a Lessee.

(g) "Unit Operator" shall mean and refer to the Lessee designated to carry on and conduct the Unitized Operations within the Unit Area as provided in Section X hereof.

(h) "Oil and Gas" shall not only refer to oil and gas as such in combination one with the other, but shall have reference to oil, gas, casinghead gas, casinghead gasoline or other hydrocarbons, or any combination or combinations thereof, or any one thereof, which may be found in or produced from the Unit Area.

(i) "Oil and Gas Rights" shall mean and include the right to explore, develop and operate lands within the Unit Area for the production of Oil and Gas, to reduce the same to possession or to share in the production so obtained or the proceeds thereof.

(j) "Effective Date" shall mean the date on which the Unit assumes and takes over the operation of the Unit Area as is provided in Section IX hereof.

(k) "Unit Expense" shall include any and all cost, expense or indebtedness incurred by the Unit or Unit Operator as authorized by this Plan of Unitization or the order of the Commission creating the Unit.

(l) "Unqualified Subscribers" shall mean and refer to those Lessees who sign this Plan of Unitization as Unqualified Subscribers as is provided for in Section XXVII hereof.

(m) "Qualified Subscribers" shall mean and refer to those Lessees who sign this Plan of Unitization as Quali-

fied Subscribers as is provided for in Section XXVII hereof.

II

Name

The name of the Unit created hereby shall be West Cement Medrano Unit.

III

Unit Area

The Unit Area of the Unit shall extend to and include all of the Medrano Sand formation underlying the lands outlined by the hatched line on the map hereto attached, marked "Exhibit A" and made a part hereof, the same being a single common source of supply of Oil and Gas, located in Caddo County, Oklahoma.

IV

Separately Owned Tracts

Each tract of land within the Unit Area, which by virtue of the ownership thereof in fee, or by common ownership of the Oil and Gas Rights therein or by lease or other agreement among the owners thereof, is presently regarded as a single tract or leasehold estate for the purpose of Oil and Gas development and operation shall be defined, regarded and treated as a Separately Owned Tract within the purview and meaning of this Plan of Unitization. The Separately Owned Tracts as so defined and established are shown on the map hereto attached and marked "Exhibit A" and are for convenient identification numbered thereon and may be referred to by number.

V

General Powers of Unit

The Unit is authorized and empowered on behalf and for the account of all the Lessees within the Unit Area, without profit to the Unit, to supervise, manage and conduct the further development and operation of the Unit

Area for the production of Oil and Gas, pursuant to the powers conferred and subject to the limitations imposed by the provisions of House Bill 339 of the 1945 Session of the Oklahoma Legislature and by this Plan of Unitization.

VI

Effect of Unitization

The adoption of this Plan of Unitization and the creation of the Unit as herein provided shall have the effect from and after the Effective Date hereof of unitizing all further development and operations for the production of Oil and Gas from the Unit Area and of pooling and unitizing the production so obtained, all to the same extent as if the Unit Area had been included in a single lease and all rights thereunder owned by the Lessees in undivided interests. Property rights, leases, contracts and all other rights and obligations in respect of the Oil and Gas Rights in and to the several Separately Owned Tracts within the Unit Area are hereby amended and modified to the extent necessary to make the same conform to the provisions and requirements of this Plan of Unitization, but otherwise to remain in full force and effect.

The relationship between the Lessees within the Unit Area, resulting from the creation of the Unit shall not be that of a trust, partnership or association but shall be in the nature of the tenancy in common.

Nothing herein contained shall be construed to require or result in a transfer to or the vesting in the Unit of title to the Separately Owned Tracts within the Unit Area or to the leases thereon, other than the right to use and operate the same to the extent set out in this Plan of Unitization; nor shall the Unit be regarded as owning any of the Unit Production. The Unit Production and the proceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under this Plan of Unitization. All property, real or personal, acquired, held or possessed for use in the operation of the Unit Area shall be the property of the Lessees as their interests may ap-

pear under this Plan of Unitization, subject, however, to the rights and powers herein granted the Unit and the Unit Operator.

The amount of the Unit Production allocated to each Separately Owned Tract and only that amount, regardless of the well or wells in the Unit Area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such Separately Owned Tract shall, for all intents, uses and purposes, be regarded and considered as production from such Separately-Owned Tract.

Operations carried on, under, and in accordance with this Plan of Unitization shall be regarded and considered as a fulfillment of and compliance with all the provisions, covenants and conditions, express or implied, of the several oil and gas mining leases upon lands included within the Unit Area, or other contracts pertaining to the development thereof, to the same extent that the development and operation of and the production of Oil and Gas from each of the several Separately Owned Tracts within the Unit Area would have constituted a fulfillment of and compliance with such leases and contracts. Wells drilled or operated on any part of the Unit Area, no matter where located, shall for all purposes be regarded as wells drilled on each Separately Owned Tract within the Unit Area.

VII

Allocation of Unit Production

All Unit Production, except so much thereof as is used in the development and operation of the Unit Area, including repressuring, pressure maintenance and other operations carried on in accordance with this Plan of Unitization, or is unavoidably lost, shall be apportioned among and allocated to the several Separately Owned Tracts within the Unit Area in accordance with the percentage and division of interest set forth and shown in Part I of "Exhibit B" hereto attached, subject, however, to the further provisions of Part II of said Exhibit.

Except as may be otherwise authorized or provided in this Plan of Unitization, the Unit Production allocated to each Separately Owned Tract shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production from such Separately Owned Tract, in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production from such Separately Owned Tract, or the proceeds thereof, had not the Unit been organized, and with the same legal force and effect.

Except as may be otherwise authorized or provided in this Plan of Unitization, and provided adequate provisions are made for the receipt thereof, the share of the Unit Production allocated to each Separately Owned Tract shall be delivered in kind to the persons entitled thereto by virtue of ownership of Oil and Gas Rights therein or by purchase from such owners, subject, however, to the right of the Unit Operator to withhold and sell the same in payment of Unit Expense pursuant to this Plan of Unitization, and subject further to the right of the Unit Operator to take and use such portion of the Unit Production (including residue gas) as may be required for operating purposes, including repressuring, pressure maintenance and any other operation carried on, pursuant to this Plan of Unitization. Persons so entitled to take and receive in kind any portion of the Unit Production shall have the right to construct, maintain and operate within the Unit Area all necessary facilities for that purpose, provided the same are so constructed, maintained and operated as not to interfere with the operations carried on pursuant hereto.

To the extent that any person entitled to take and receive in kind any portion of the Unit Production shall fail to take and receive the same currently as and when produced, the Unit Operator, as agent and for the account and at the expense of such person, is authorized to market and sell or itself purchase, at not less than the market price prevailing at the time of such sale or purchase, the portion of Unit Production not so taken in kind by the person entitled to take and receive the same. Proceeds of the Unit Pro-

duction so sold, or purchased by the Unit Operator, shall be paid by the Unit Operator to the person or persons for whose account the same is so marketed.

The person or persons receiving in kind the Unit Production allocated to any Separately Owned Tract or receiving the proceeds of such Unit Production, if the same is marketed and sold, or purchased by the Unit Operator, shall be responsible for the payment of, and shall indemnify the Unit, the other Lessees and the Unit Operator against any liability for, any and all royalties, overriding royalties, production payments, gross production taxes and any and all other payments and taxes chargeable against or payable out of the Unit Production which is received in kind by, or the proceeds of which are paid to, such person or persons, and neither the Unit nor the Unit Operator shall have any responsibility or liability for payment of such royalties, overriding royalties, production payments, gross production taxes or the other payments or taxes.

If at any time the title or right of any person claiming the right to receive in kind all or any portion of the Unit Production allocated to a Separately Owned Tract is in dispute or is disapproved by the Operating Committee, the Unit Operator shall at the direction of the Operating Committee either (a) withhold and market, or itself purchase the portion of the Unit Production, title to which is in dispute or is disapproved, and impound the proceeds thereof until such time as the title or right thereto is established, by final judgment of a court of competent jurisdiction or otherwise to the satisfaction of the Unit Operator, whereupon, the proceeds so impounded shall be paid, without interest, to the person or persons rightfully entitled thereto, or (b) may require that the person or persons to whom such Unit Production is delivered, or to whom the proceeds thereof are paid, furnish security for the proper accounting therefor to the rightful owner or owners in the event the title or right of such person or persons shall fail, in whole or in part.

The Unit Operator shall have the right to take and utilize so much of the Unit Production as may be neces-

sary or desirable in the development and operation of the Unit Area, including but without being limited to, the use of gas (including residue gas) for repressuring, pressure maintenance or other operations carried on in accordance with this Plan of Unitization. No royalties, overriding royalties, production payments or other payments shall be payable upon or with respect to that portion of the Unit Production so taken and utilized by the Unit Operator or which may be lost in handling or otherwise without want of due diligence on the part of the Unit Operator.

VIII

Operating Committee

An Operating Committee is hereby created to consist of one representative to be designated by each Lessee within the Unit Area, provided that an individual Lessee may himself be a member of the Committee. Such designation shall be in writing and with respect to the representative to participate at the organization meeting of the Committee shall be presented at such meeting, or if thereafter made, shall be filed with the Secretary of the Operating Committee. Any such Lessee may in like manner (a) designate an alternate representative on the Operating Committee, who, in the absence of the Lessee or its regular representative, shall have ~~the~~ same full right and power to represent the interest of such Lessee, or (b) may from time to time discharge any such regular or alternate representative and designate a new representative to act for such Lessee on the Operating Committee.

The Operating Committee shall have the general overall management and control of the Unit and the conduct of its business and affairs and the operations carried on by it, and is authorized and empowered, subject to the terms and provisions hereof, to do all things necessary, proper and convenient for carrying out the terms and spirit of this Plan of Unitization and to that end, not excluding or limiting any other power or powers that may be necessary or

proper for that purpose, shall have the following specific powers and duties:

- (a) To adopt rules and regulations for the proper functioning of the Operating Committee, including such matters as the time and places of holding meetings, the calling thereof or the manner of taking the vote on any question all in a manner not inconsistent with the express requirements of this Plan of Unitization.
- (b) To remove any Unit Operator.
- (c) To select a successor to any Unit Operator.
- (d) To determine the extent of drilling operations and development to be carried on by the Unit Operator, including the approval or disapproval of the contemplated drilling, deepening, plugging back, reconditioning, abandonment or the use to be made of any well or wells.
- (e) To pass upon and approve or disapprove all costs and estimates of costs and any proposed expenditure by the Unit Operator; provided, that the Committee may permit without prior approval by it the incurring of normal operating expense and any proposed expenditure by the Unit Operator of not more than Five Thousand (\$5,000.00) Dollars; and provided further that the approval by the Operating Committee of the drilling of any well or wells or carrying out any specific project of development or operation shall mean and include the approval of all necessary expenditures in drilling, completing and equipping such well or wells or carrying out such project.
- (f) To determine from time to time the rate at which and the wells from which the Unit Production shall be produced in conformity with good engineering practices and any applicable conservation laws or regulations.
- (g) To pass upon, approve or disapprove the purchase, sale or other disposal of materials and equipment by the Unit Operator otherwise than in the normal course of approved operations.
- (h) To approve and authorize the purchase, construction, location, abandonment, sale or other disposal of any

compressor plant, gasoline plant, tank batteries, salt water disposal system or other facilities serving the Unit Area.

(i) To determine the manner in which, the location at which and the extent to which gas can best and should be injected into the reservoir to accomplish the Plan of Operation set forth in Section XV hereof.

(j) To provide for the proper auditing of the accounts of the Unit Operator with respect to the operation and development of the Unit Area.

(k) To appoint such sub-committees as it may deem proper and requisite, as for example, an advisory committee, legal committee, engineering committee, plant committee, geological committee and tax committee to act under the authority and subject to the control of the Operating Committee consonant with the terms of this Plan of Unitization.

(l) To approve or disapprove any proposed plan of development or operation or amendment thereof required to be submitted to any regulatory body having jurisdiction of the subject matter thereof.

(m) To approve or disapprove any proposed expenditures for expert technical advice, including any extra services rendered by the Unit Operator's technical staff, not contemplated by the provisions of the accounting procedure hereto attached, marked "Exhibit C" and not covered by the overhead charges therein authorized, which overhead charges in said accounting procedure are intended to cover only normal lease development and lease operations.

(n) To direct and consult with the Unit Operator in all matters pertaining to the duties and functions of the Unit Operator.

(o) To provide for the finances in the manner herein provided for the carrying on of the Unit Operations hereunder.

Each Lessee within the Unit Area who is represented on the Operating Committee shall have a vote equal to the proportionate interest of said Lessee in the Unit determined as follows:

(a) In respect of each Separately Owned Tract, the Lessee or Lessees thereof shall have a vote equal to the percentage indicated opposite such Separately Owned Tract in Part I of "Exhibit B" hereto attached.

(b) Should there be more than one Lessee of a Separately Owned Tract, the vote in respect thereof shall be divided between such Lessees in proportion as such Lessees share in the Unit Expense chargeable to such tract.

(c) The vote of a Lessee having an interest in more than one Separately Owned Tract shall be the sum total of the votes of such Lessee in respect of all such tracts.

In all matters except the removal of a Unit Operator the vote on behalf of Lessees having at least 66 $\frac{2}{3}$ % of the total voting interest in the Unit shall control.

A Unit Operator may be removed only by the vote of at least 75% in interest of the Lessees other than such Unit Operator.

If at any time the voting interest of a Lessee should be such as to control the action taken by the Committee, the vote of such Lessee shall not serve to carry or defeat action taken by the Committee unless such vote is supported by the vote of a majority in interest of the remaining Lessees.

Minutes shall be made of all meetings of the Operating Committee and kept as a part of the permanent records of the Unit. Such minutes need not be a verbatim record of all the proceedings, but shall show and reflect (a) the names of all members present at the meeting; (b) all motions and resolutions offered or acted upon, together with the result of such action; and (c) such other formal action as may be taken by the Committee. A copy of the minutes of each such meeting shall be mailed to each member of the Committee within a reasonable time after the meeting.

Notices or other communications addressed and sent to the Unit or to the Operating Committee by United States mail or telegraph in care of the Unit Operator shall be deemed to have been properly given to or served upon the Operating Committee. The Unit Operator shall

promptly deliver all such notices or communications to the Chairman or Secretary of the Operating Committee.

IX

Organization of Unit and Effective Date of Plan

Subject to call by Lessees of record owning 50% or more in interest in and to the Unit as shown in Part I of "Exhibit B" hereto attached the representatives designated by the several Lessees to serve on the Operating Committee shall meet at some convenient place to perfect the organization of the Operating Committee. Such meeting may be held at any time after twenty (20) days from the date of the order of the Commission approving this Plan of Unitization. Notice of the time and place of said meeting shall be mailed at least ten (10) days prior thereto to all Lessees within the Unit Area whose names and addresses are known to the Lessees calling said meeting, as well as those Lessees who shall have within ten (10) days from the date of said order notified the Secretary of the Commission in writing of their desire to be so notified of the meeting. Any Lessee within the Unit Area desiring notice of such meeting may file a statement of such desire with the Secretary of the Commission, giving its name and the address to which it desires the notice to be sent.

The Operating Committee shall organize by selecting a Chairman, a Vice-Chairman, a Secretary and such other officers as to the Committee may seem proper. The Chairman and Vice-Chairman shall be selected from among the members of the Operating Committee. The Secretary and other officers may or may not be members of the Committee. The Chairman shall preside at all meetings of the Operating Committee when he is present and shall be the Chief Executive Officer of the Unit. The Vice-Chairman shall perform all duties of the Chairman in the absence of the Chairman. The Secretary shall keep and maintain all the records of the Committee and shall also be Secretary of the Unit. Such officers shall serve at the will of the Operating Committee and perform such other

duties as are delegated to them by the Operating Committee.

Upon completion of its organization, the Operating Committee shall proceed to make plans and preparations and take such steps as are necessary for the taking over of the unitized operations and further development of the Unit Area by the Unit, and shall in advance thereof fix the time when the Unit will take over such operation and development, and give the Lessees within the Unit Area reasonable notice thereof. *The time so fixed shall not be less than sixty-one (61) days after the entry of the order of the Commission approving this Plan of Unitization nor more than three months after the time when said order shall have become final.*

The time when the Unit takes over the operation and further development of the Unit Area shall be the Effective Date of this Plan of Unitization.

In the event the Unit shall fail to assume and take over the operation of the Unit Area on or before three (3) months after the time when the order of the Commission approving this Plan of Unitization shall have become final, then and in that event the Unit shall, without further action on the part of the Operating Committee or the Commission, be dissolved and all rights and obligations under this Plan of Unitization shall be at an end, except that any and all cost and expense incurred by the Unit incident to its organization or preparatory to the taking over of the operation of the Unit Area shall be borne and paid for by the Lessees whose representatives on the Operating Committee by their vote authorized the incurring of such expense, in proportion as the interest of each such Lessee in and to the Unit as set out in Part I of "Exhibit B" bears to the total interest of all such Lessees in and to the Unit as shown on said Part I of "Exhibit B." In the event the Unit assumes and takes over the operation of the Unit Area within the time so named, this Plan of Unitization shall thereafter remain in force and effect until such time as the Unit is dissolved and abandoned as provided in Section XXV hereof.

The order of the Commission approving this Plan of Unitization shall be regarded as having become final at the end of the time allowed by law for any appeal therefrom, if no appeal is taken, or, if an appeal is taken, then upon the final determination of any such appeal.

The Unit on or before five (5) days after the Effective Date hereof shall submit to the County Clerk of Caddo County, Oklahoma, for filing, a written declaration signed by the Chairman and Secretary of the Operating Committee, setting forth

- (a) The hour, day and year on which the Unit took over the operation of the Unit Area;
- (b) A description or plat of the lands included within the Unit Area; and
- (c) The cause number and date of the Commission order approving this Plan of Unitization, with an appropriate reference to such order and the files of the Commission for further information concerning this Plan of Unitization.

X

Unit Operator

Subject to the further provisions of this Plan of Unitization, operations in connection with the development and the operation of the Unit Area for Oil and Gas shall be carried on and conducted by a Unit Operator in accordance with the instructions of the Operating Committee.

The Unit Operator shall:

- (a) Conduct all such operations in a good and workman-like manner.
- (b) Keep full, true and correct books, accounts and records of its operations hereunder which shall be made available for inspection at all reasonable times by any of the Lessees within the Unit Area.
- (c) Mail to each Lessee on or before the 16th day of each calendar month a full, true and correct statement of all Unit Production during the preceding calendar month.
- (d) Comply, to the extent of its operations within the Unit Area, with the Workmen's Compensation Laws or

the State of Oklahoma and with all other valid and applicable federal and state laws and regulations.

(e) Carry such insurance as may be required by the Operating Committee.

(f) Keep the land and leases within the Unit Area free from liens and encumbrances occasioned by the operations of the Unit Operator save only the lien granted the Unit and the Unit Operator under this Plan of Unitization.

The Operating Committee may by the vote hereinbefore provided remove a Unit Operator at any time. A Unit Operator may resign only after giving the Operating Committee six months' written notice of its intention to resign, or sooner if a successor is selected and has assumed the duties of Unit Operator prior to the end of such time. Upon the removal or resignation of a Unit Operator the Operating Committee shall designate a successor Unit Operator from among the Lessees within the Unit Area.

Phillips Petroleum Company is hereby designated as Unit Operator.

XI

Unit Expense.

The Unit Operator in the first instance shall pay and discharge all cost and expense incurred in the development and operation of the Unit Area and in the conduct of the activities and affairs of the Unit. All such cost and expense incurred in the development and operation of the Unit Area shall be in accordance with the Accounting Procedure hereto attached, marked "Exhibit C" and made a part hereof. All other costs and expense shall be only such sums as are approved by the Operating Committee.

All such Unit Expense as it accrues shall be charged to the several Separately Owned Tracts in the Unit Area in proportion to the percentage of interest of such tracts in and to the Unit as set forth and shown in Part I of "Exhibit B" hereto attached.

Except as may be otherwise hereinafter specifically provided, a Lessee or Lessees obligated or responsible for the

cost and expenses of operating a Separately Owned Tract for Oil and Gas in the absence of unitization shall, in the same proportion and to the same extent, be chargeable with and responsible for the payment of the Unit Expense charged against such Separately Owned Tract.

The Unit Operator shall on or before the last day of each calendar month render to each Lessee within the Unit Area an itemized statement of all charges and credits during the preceding month and of the amount due from or to each such Lessee with respect to each Separately Owned Tract. If the Unit Operator so elects, such statement of account may also include a charge by way of an advance of the proportionate part of the estimated Unit Expense for the ensuing month chargeable to the Lessee against whom such statement is rendered, using as a basis therefor the budget hereinafter provided for. Except as may be otherwise provided herein, each Lessee chargeable with the payment thereof shall, within fifteen (15) days from the receipt of such statement, pay to the Unit Operator the amount thereof. If not paid when due, the unpaid balance shall bear interest at the rate of 6% per annum until paid. Payment of any such statement shall not prejudice the right of any Lessee to protest or question the correctness thereof; provided, the Unit Operator shall not be required to adjust any item of charge or credit unless a claim therefor has been presented in writing within six (6) months after the approval by the Operating Committee of the annual audit for the period in which the charge or credit was made.

Before or as soon as practical after the Effective Date hereof, the Operating Committee, acting in conjunction with the Unit Operator, shall prepare a budget of estimated Unit Expense for the remainder of the calendar year and on or before the first day of each December thereafter shall prepare a budget of estimated Unit Expense for the ensuing calendar year, which budgets shall set forth the estimated Unit Expense by quarterly periods. Unless otherwise specified in the budget, it shall be presumed for the purpose of advance billings as aforesaid, that the

estimated Unit Expense for each month of a quarterly period shall be one-third ($\frac{1}{3}$) of the estimate for the quarterly period. Budgets so prepared shall be estimates only and shall be subject to adjustment and correction by the Operating Committee and Unit Operator from time to time whenever it shall appear that an adjustment or correction is proper. A copy of each such budget and adjusted budget shall be promptly furnished each Lessee within the Unit Area.

Any Lessee, other than an Unqualified Subscriber, who does not elect to pay its proportionate share of the Unit Expense, shall not be personally obligated for the payment thereof, but the amount thereof or such portion thereof as such Lessee shall elect not to pay, together with interest thereon at the rate of 6% per annum, shall be carried and shall be payable, so far as such Lessee is concerned, as follows:

(a) So much of said charge as is made up of current operating costs, as distinguished from items of investment, together with interest thereon, shall be payable out of proceeds from all Unit Production to the credit of the interest or interests chargeable therewith.

(b) So much of said charge as is made up of items of investment, together with interest thereon, shall be payable out of 50% of the net proceeds of the Unit Production to the credit of the interest or interests chargeable therewith after deducting the charge for Operating costs under subparagraph (a) last above.

(c) All credits to any such Lessee on account of the sale or other disposal of surplus material or equipment or otherwise shall be applied against any such unpaid Unit Expense charged against such Lessee.

Amounts so carried as aforesaid, shall be billed to and paid by the Lessees who sign this Plan of Unitization as Unqualified Subscribers, in the proportion that the interest of each in the Unit bears to the total interests in the Unit of all of the Unqualified Subscribers to this Plan of Unitization; Lessees so paying the same shall be reimbursed therefor, together with interest thereon, as and

when the amounts so carried and the interest thereon are collected from the Lessees or interests primarily chargeable therewith.

The Unit shall have a first and prior lien upon the leasehold interest (exclusive of a $\frac{1}{8}$ royalty interest) in and to each Separately Owned Tract, the interest of the owners thereof in and to the Unit Production and all equipment in possession of the Unit, to secure the payment of the Unit Expense and other items of cost charged to and against such Separately Owned Tract, provided such lien may be enforced as against overriding royalty, oil and gas payments, royalty interests in excess of a $\frac{1}{8}$ of the production, or other interests which otherwise are not chargeable with such costs, only in the event the owner of the interest or interests primarily responsible fails to pay such Unit Expense when due, and the production to the credit thereof is insufficient for that purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which under the Plan of Unitization is not primarily responsible therefor pays any part of such Unit Expense for the purpose of protecting such interest or the amount of such Unit Expense in whole or in part is deducted from the Unit Production to the credit of such interest, the owner thereof shall, to the extent of such payment or deduction, be subrogated to all of the rights of the Unit and of the Unit Operator with respect to the interest or interests primarily chargeable with such Unit Expense. A one-eighth ($\frac{1}{8}$) part of the Unit Production allocated to each Separately Owned Tract shall in all events be regarded as royalty to be distributed to and among or the proceeds thereof paid to the royalty owners free and clear of all Unit Expense and free of any lien therefor. The lien hereinabove provided for shall be for the use, benefit and protection of Unit Operator or other Lessees or persons entitled to receive or share in the monies, the payment of which is secured thereby, and in the event of failure of the Unit to enforce such lien, the Unit Operator or other person entitled to the benefit there-

of, shall be subrogated to the lien rights of the Unit, including the right of foreclosure.

In the event of a failure of any Lessee to pay its share of the Unit Expense when due, and also in the case of a Lessee who elects to be carried as aforesaid, the Unit Operator shall be entitled to take and market, or itself purchase the Unit Production to the credit of such Lessee or to the credit of the interest or interests chargeable with such Unit Expense, or to otherwise collect and receive the proceeds from the sale thereof, and shall apply all such sums so collected against the delinquent or unpaid Unit Expense due from such Lessee or interest, the balance of such proceeds, if any, to be paid to the Lessee or other person entitled thereto. The Unit Operator may likewise take any other credit due any such Lessee or interest and apply the same against sums due from such Lessee or interest for Unit Expense.

Any and all income and credits received by Unit Operator on account of Unit Operations hereunder, from whatever source received, shall currently be accounted for and credited to the Lessees or interests entitled to credit therefor.

XII

Initial Adjustment of Investment

Upon the Effective Date hereof the Unit shall assume control and management of the further development and operation of the Unit Area and, except as may be otherwise herein provided, each Lessee within the Unit Area shall deliver possession to the Unit Operator of (a) all wells within the Unit Area, (b) all lease and other operating equipment used in the operation of such wells, and (c) all production and well records and other pertinent data pertaining thereto.

(1) Completed Wells

All wells which as of the Effective Date are completed as producing wells in the Medrano Sand shall be taken over by the Unit, except that in the case of wells deter-

mined by the Operating Committee to be unnecessary to Unit operations, the owners thereof may upon request retain possession thereof for the purpose of completing the same in some other formation not a part of the Unit Area, provided, the owners thereof shall immediately cause the Medrano Sand to be sealed off in a manner satisfactory to the Operating Committee.

(2) Wells Being Drilled or Reconditioned

Any well being drilled, repaired, deepened or plugged back to the Medrano Sand as of the Effective Date hereof may be completed by the separate owner or owners thereof and if so completed as a producing well in the Medrano Sand, shall be taken over by the Unit except that in the case of wells determined by the Operating Committee to be unnecessary to Unit Operation, the possession thereof may be retained by the owners thereof under the circumstances and upon the conditions named in (1) last above.

(3) Casing, Tubing and Wellhead Connections

All casing, one string of tubing and wellhead connections in or on wells taken over by the Unit shall be treated and regarded as a part of such wells.

(4) Lease and Operating Equipment

As of the Effective Date hereof the Operating Committee shall determine what part of the lease and other operating equipment (exclusive of warehouses, lease houses, camps and office buildings) used in the operation of wells taken over by the Unit it considers necessary or desirable to take over and use in connection with the unitized development and operation of the Unit Area including, by way of example, but not thereby excluding, other equipment of a like or different kind, derricks, tank batteries, separators, rods, pumps, tubing in excess of one string, flow lines, water lines, gas lines, etc., which said lease and operating equipment (exclusive of warehouses, lease houses, camps and office buildings) shall be delivered to and taken over by the Unit. All lease and operating

equipment not so taken over shall remain the separate property of the several owners thereof and may be used by said separate owners in the operation of wells producing from formations other than the Medrano Sand or reclaimed as such separate owners may desire. The acquisition of existing warehouses, lease houses, camps, or office buildings considered desirable to the operation and development of the Unit Area shall be by negotiation and separate contract of purchase with the owner or owners of such warehouses, lease houses, camps and office buildings.

(5) Adjustment of Well Investment

(a) Each Separately Owned Tract on which is one or more wells taken over by the Unit shall be given credit for the value assigned to such well or wells as follows: wells listed in "Exhibit D" hereto attached shall have the assigned value therein shown; wells not listed in "Exhibit D" shall be assigned a value determined in the same manner as was used in determining the values assigned to the wells listed in "Exhibit D".

(b) Each Separately Owned Tract within the Unit Area shall thereupon be charged with the total value of all such wells in proportion to such tract's percentage of interest in and to the Unit as shown in Part I of "Exhibit B" hereto attached, less the amount of the credit due such tract under (a) last above, resulting in either a net debit or a net credit with respect to each Separately Owned Tract.

(c) The amount of any net debit chargeable against a Separately Owned Tract under (b) above shall be payable by the Lessee or Lessees of such tract out of 10% of $\frac{7}{8}$ of the Unit Production of oil allocated to such tract if such tract has a credit under (a) above, or 25% of $\frac{7}{8}$ of said oil if said tract has no credit under (a) above. The oil applicable to the oil payment with respect to each Separately Owned Tract having a net debit shall be sold by the Unit Operator, at not less than the prevailing market price, for the account of the Lessees of Separately Owned Tracts having net credits under (b) above until such time

as the accumulated proceeds thereof equal the amount of such net debit. The Lessee or Lessees of each Separately Owned Tract having a net debit shall have the right to designate the purchaser to whom said oil shall be sold, provided the purchaser so designated will take and purchase said oil at the prevailing market price. Amounts collected by the Unit Operator under the provisions of this paragraph shall be paid by said Unit Operator to the Lessees of Separately Owned Tracts having net credits under (b) above in proportion to the percentages which the net credit due each bears to the net credit due all such Lessees. The amounts of the debits and credits under (a) and (b) above in respect to Separately Owned Tracts held by the same Lessee may, at the option of such Lessee, be grouped for the purpose of arriving at a combined net debit for all such tracts payable out of such fraction of $\frac{7}{8}$ of the Unit Production of oil allocated to all such tracts as will result in the application of the same amount of oil each month to the payment of said combined net debit as would have been applied to the payment of the separate net debits against said several tracts in the absence of such grouping.

(6) Accounting for Lease and Operating Equipment

An accounting for the lease and operating equipment so transferred to and taken over by the Unit shall be had as between the owners thereof, and all Lessees within the Unit Area on the basis of the value thereof determined in accordance with Section IV of the accounting procedure hereto attached marked "Exhibit C", plus a reasonable allowance for the cost of installation, if installed, to be determined by the Operating Committee, and proper charges and credits entered against the several Separately Owned Tracts, all to the end that on and after the Effective Date hereof each of the several Lessees within the Unit Area instead of separately owning the equipment delivered to the Unit by such Lessees, will have exchanged the same for an undivided interest in and to all the equipment so taken over and acquired by the Unit and will have paid

or have been paid, as the case may be, for any difference in value. The amount of any net charge made against a Separately Owned Tract under this paragraph shall be treated and regarded in all respects the same as any other charge for Unit Expense chargeable to such tract.

XIII

Oil in Lease Tankage as of Effective Date

A proper and timely gauge shall be made of all lease or other tanks taken over by the Unit to ascertain the amount of oil in such tanks at the time the Unit assumes and takes over the development and operation of the Unit Area. So much of such oil as is legally produced shall remain and be the property of the parties entitled thereto had not the Unit been created, and upon request, shall be delivered in kind to persons entitled thereto, or in the absence of such request, shall be sold by the Unit Operator for the credit of such persons at not less than the prevailing market price and the proceeds thereof paid to such persons.

XIV

Settlement With Respect to Gas Produced and Under-production of Gas Prior to Effective Date

A settlement with respect to gas produced and under-production of gas prior to the Effective Date shall be made as follows:

(a) Each Separately Owned Tract having underproduction to its credit as of the Effective Date shall be given credit for such underproduction, less so much thereof as may have accumulated between November 1, 1946, and the Effective Date, on the basis of 95% of what the Lessee or Lessees of each such tract would have received and been paid therefor, less seller's cost of dehydration, had said gas been produced and sold currently during the period or periods in which such underproduction accumulated.

(b) Each Separately Owned Tract shall be charged with the sales of gas from such tract during the four months'

period from November 1, 1945, to March 1, 1946, plus any overproduction charged against such tract as of the Effective Date other than overproduction as may have accumulated during said four months' period, on the basis of $\frac{7}{8}$ of 95% of the average price, less seller's cost of dehydration, received for gas sold from such tract during said four months' period from November 1, 1945 to March 1, 1946.

(c) Unit Operator shall pay to the Lessee or Lessees of each Separately Owned Tract having a net credit after deducting the amount of the charge under (b) from the credit under (a) the amount of such net credit.

(d) The Lessee or Lessees of each Separately Owned Tract against which there is a net charge after deducting the amount of the credit under (a) from the amount of the charge under (b) shall be charged with and shall pay to the Unit Operator the amount of said net charge in the same manner and on the same terms and conditions as if said net charge was a charge for Unit Expense against such Separately Owned Tract.

(e) If the amounts collected under (d) are less than the amounts paid under (c) the difference shall be charged against the several Separately Owned Tracts within the Unit Area in proportion to their respective percentages of interest as set out in Part I of Exhibit B hereof as an item of Unit Expense. If the amounts collected under (d) are more than the amount paid out under (c), the difference shall be credited to the several Separately Owned Tracts and paid to the Lessees thereof in proportion to the percentages of interest of such tracts as set out in Part I of Exhibit B hereof.

(f) The amounts credited to each Separately Owned Tract and paid to the Lessee or Lessees thereof under (c) and (e) shall be distributed and paid by such Lessee or Lessees to the owners of the Oil and Gas Rights in and to such tract, including the Royalty Owners, in the same proportion and to the same extent that they share in the Unit Production allocated to such tract as of the Effective Date hereof.

(g) The underproduction and overproduction of gas and

the amount of sales of gas from any Separately Owned Tract at any time or during any period shall be determined from the books and records of the Commission.

XV

Plan of Operation

To the end that the quantity of Oil and Gas ultimately recoverable from the Unit Area may be substantially increased and waste prevented, the further development and operation of the Unit Area, from and after the Effective Date hereof, shall be conducted by the application to the Unit Area of the following unitized method of operation:

(a) As soon as practical after the Effective Date hereof, the Unit shall make the necessary preparations therefor and with diligence and in accordance with good engineering and production practices engage in pressure maintenance or repressuring operations through the return of gas to the reservoir to the extent and in the manner best calculated to efficiently and without waste result in the greatest ultimate recovery of Oil and Gas from the Unit Area. In so doing, the Unit is authorized to construct, purchase or otherwise acquire and operate such gasoline plants, processing plants or compressor plants and other facilities as may in the best judgment of the Operating Committee be desirable for that purpose, or is authorized, should it so elect, to contract with the owners of an individually owned plant or plants and facilities to render in whole or in part the desired services in connection therewith.

(b) The oil produced from the Unit Area shall be produced from those wells in the Unit Area from which the same can be obtained with the smallest loss or dissipation of reservoir energy reasonably possible under practical operating conditions as they may exist from time to time.

(c) Gas wells and wells which produce oil with gas-oil ratios found to be excessive in relation to the gas-oil ratios of other wells producing oil from the Unit Area shall be shut in or the production therefrom restricted in such manner as to make the most effective utilization of the gas

energy of the reservoir reasonably possible under practical operating conditions as they may exist from time to time.

(d) Production of Oil and Gas from different parts of the Unit Area shall be regulated in such manner as to retard, control or effectively utilize water encroachment, in such manner and to such extent as may be found reasonably possible and economically advisable from time to time.

(e) Gas (other than gas produced in connection with the production of oil) shall be produced from the Unit Area only at such time or times and in such manner as in the judgment of the Operating Committee such gas may be produced without materially decreasing the quantity of oil economically recoverable from the Unit Area.

(f) Such other unitized method or methods of operation as may from time to time be determined by the Operating Committee to be feasible, necessary or desirable to efficiently and substantially increase the ultimate recovery of Oil and Gas from the Unit Area, provided the estimated additional cost thereof does not exceed the value of the additional Oil and Gas to be so recovered.

Nothing herein contained shall prevent the Unit from abandoning or changing in whole or in part any particular method or methods of operation, including the pressure maintenance or repressuring operations required under (a) above, if and in the event, at such time, and to the extent that any such method of operation as applied to the Unit Area is, in the best judgment of the Operating Committee, no longer in accord with good engineering or production practices.

XVI

Right to Information Regarding Unit Operations

Each and all Lessees within the Unit Area shall have access to the entire Unit Area at all reasonable times to inspect and observe operations of every kind and character on the property, and shall have access at all reasonable times to any and all information pertaining to wells drilled, production secured, marketing of Unit Production and to the books, records and vouchers relating to the operation

of the Unit Area. Unit Operator shall, upon request, furnish to any such lessee tank tables, daily gauge and run tickets and reports of stock on hand at the first of each month and any other pertinent information pertaining to the Unit Area or development and operation thereof. All of the rights herein granted shall apply with equal force to the construction and operation by the Unit of any repressuring or pressure maintenance plant or other facilities in connection therewith.

XVII

Liability

No member of the Operating Committee or any other committee shall be personally liable or individually responsible for any act, error, default or omission as a member of such committee or committees.

Neither the Unit nor the Unit Operator shall be liable or responsible under any of the provisions of this Plan of Unitization for any acts or omissions resulting from causes beyond the control of the Unit or such Unit Operator, or other causes which by the exercise of due diligence could not have been prevented or overcome.

Unit Operator shall not be liable or responsible for any damage to the Unit Area or the property, equipment or facilities used in the development and operation thereof, or for the loss of any production arising out of its operation of the Unit Area, except only for bad faith or gross negligence in connection therewith.

If and in the event, notwithstanding the foregoing provisions of this section, the Unit, the Unit Operator or any member of the Operating Committee is held liable by a court of competent jurisdiction for any matter or thing for which it is herein provided the Unit or person so named shall not be liable, the amount of such liability as finally determined shall thereupon be treated, regarded and paid as an item of Unit Expense.

XVIII

Change of Interest

All transfers, assignments and conveyances of any interest in, or with respect to, any of the Separately Owned Tracts within the Unit Area shall be subject to the terms, provisions and conditions of this Plan of Unitization, but shall not be binding on the Unit or the Unit Operator unless and until a photostatic or certified copy of the recorded instrument evidencing such change of ownership has been delivered to the Unit Operator. Each such transfer, assignment or conveyance, whether so stating or not, shall operate to impose upon the person or persons acquiring such interest the obligation of the assignor or grantor with respect to the interest so transferred and shall likewise operate to give and grant to the person or persons acquiring such interest all benefit attributable hereunder to such interest.

XIX

Audits

The Operating Committee shall cause an audit to be made of the books, accounts and records of the Unit Operator in respect to matters pertaining to the Unit and the operation of the Unit Area at least once each year and shall furnish a copy thereof to each of the Lessees within the Unit Area. Each such audit shall cover the period intervening since the last audit. The audit may be made by an auditor or auditing committee from the accounting staff of one or more of the Lessees within the Unit Area, or by an independent auditor or auditors employed by the Unit to make such audit.

XX

Rights of Way

The Unit shall have a servitude and right of way on, over and across all of the lands in the Unit Area for the purpose of laying, constructing, building, using and main-

taining, operating, changing, repairing and removing pipe lines, tanks, telegraph and telephone lines, water lines, and other facilities for the development and operation of the Unit Area for Oil and Gas and for the gathering, handling and disposal of the Unit Production; provided, the Unit shall pay all damages to growing crops, timber, fences, improvements and structures on the land resulting from the exercise of the rights and privileges granted to it in this section.

XXI

Claims, Suits and Judgments Against Individual Owners of Unit Area

In the event claim is made against any of the owners of the Unit Area or any of such owners are sued on account of any matter or thing growing out of the development and operation of the Unit Area by the Unit and over which such owner or owners have no control because of the rights, powers and duties herein granted the Unit, said owner or owners shall immediately notify the Operating Committee in writing of such claim or suit. The Operating Committee shall assume and take over the further handling of such claim or suit and in pursuance thereof may select an attorney or attorneys for that purpose, who, subject to the directions of the Operating Committee, shall have the exclusive right to direct and control the settlement or defense thereof. Should such claim be settled, final judgment be entered against any such defendant or defendants upon said cause of action and any such defendant is required to pay or satisfy such judgment or expense of litigation in whole or in part, the amount of such settlement or judgment shall be treated, regarded and paid as any other item of Unit Expense. Nothing herein contained shall apply to or relieve any such owner or owners of liability which may have accrued prior to the effective date of this Plan of Unitization.

XXII

Title Information

Upon request of either the Operating Committee or the Unit Operator, the Lessees of the several Separately Owned Tracts shall furnish and make available to the Unit or the Unit Operator, as the case may be, an abstract brought to the date of the request, together with all other title information in the possession and files of such Lessees, title opinions, original or true copies of all leases, assignments, contracts, curative matter and all other data and information pertaining to or otherwise affecting titles to the Oil and Gas Rights in and to the Unit Area.

XXIII

Other Formations

It is understood that the common source of supply described herein as the Unit Area, namely, the Medrano Sand of the West Cement Field, underlies and may overlie other reservoirs or common sources of supply of Oil and Gas not a part of the aforesaid Medrano Sand or a part of the Unit Area of the Unit created hereby. Except as specifically provided in this Plan of Unitization, all rights of any and all persons in and to such other reservoirs or common sources of supply of Oil and Gas and the production therefrom, together with the right of ingress and egress and the use of the surface of the Unit Area for the exploration, development and operation of such other reservoirs or common sources of supply of Oil and Gas, are expressly reserved unto the separate owners thereof and shall remain unaffected by the creation of the Unit and the adoption of this Plan of Unitization, all to the same extent as if this Plan of Unitization had not been adopted except that in the exercise of such rights the owners thereof shall have due regard for the rights granted the Unit with respect to its operations hereunder. Likewise, any reference in this Plan of Unitization to a Separately Owned Tract or to the Unit Area, although in gen-

eral terms broad enough to include the surface and all underlying common sources of supply of Oil and Gas, shall have reference to the lands embraced within such Separately Owned Tract and within the Unit Area only in relation to the Medrano Sand of the West Cement Field.

XXIV

Abandonment of Wells

If the Operating Committee at any time desires to abandon any well completed in the Medrano Sand and salvage the casing and other equipment that is a part of the well, the Lessee or Lessees of the Separately Owned Tract on which such well is located shall be notified in writing of such decision and shall have and be granted thirty (30) days from receipt of such notice within which to elect to take over such well for the purpose of completing the same in some other formation not a part of the Unit Area. Any such Lessee electing to take over such a well shall pay the salvage value of the casing and other equipment in and on the well, determined in accordance with Section IV of the accounting procedure hereto attached marked "Exhibit C", and shall agree to assume full responsibility for the proper plugging and abandonment thereof at such time as the well is ultimately abandoned. No such well shall be operated or used for the production of Oil and Gas from the Unit Area and to that end the Lessee taking over such a well shall immediately cause the Medrano Sand in such well to be sealed off in a manner satisfactory to the Operating Committee. In the event the Lessee or Lessees of such a Separately Owned Tract do not elect to take over such well, the Unit Operator shall proceed to properly plug and abandon the same and salvage the casing and other equipment therefrom.

XXV

Abandonment of Operations and Dissolution of Unit

At such time as it is determined by the Operating Committee that Unit Production can no longer be produced

from the Unit Area in paying quantities the further development and operation of the Unit Area by the Unit shall be abandoned, the Unit dissolved and its affairs wound up.

Upon abandonment of Unit Operations,

(a) All rights in and to the several Separately Owned Tracts shall revert to the separate owners and Lessees thereof;

(b) The owner or Lessee of a Separately Owned Tract desiring to take over and continue to operate a well located on such Separately Owned Tract may do so by paying the salvage value of the casing and other equipment in and on the well determined in accordance with Section IV of the accounting procedure hereto attached marked "Exhibit C" and by agreeing to properly plug and abandon the well at such time as it is ultimately abandoned;

(c) With respect to all wells not taken over by the owner or Lessee of the Separately Owned Tracts as aforesaid, the Unit Operator shall salvage so much of the casing and other equipment therein as can economically and reasonably be salvaged and shall cause such well to be properly plugged and abandoned;

(d) The salvaging, liquidation or other distribution of assets and properties used in the operation of the Unit Area shall be in a manner determined by the Operating Committee; provided, any Lessee desiring to take its share of the physical assets or any portion thereof in kind may do so. All such assets and property shall belong to the several Lessees in proportion to their respective interests in the Unit.

At such time as the Unit Operations are abandoned and the affairs of the Unit wound up, the Unit shall submit for filing a declaration to that effect with the Secretary of the Corporation Commission and with the County Clerk of Caddo County, Oklahoma, whereupon the rights, powers and duties of the Unit shall be at an end.

XXVI

Amendment to Plan of Unitization and Enlargement of Unit

Any amendment of this Plan of Unitization or any enlargement of the Unit or Unit Area shall be in accordance with the provisions of Sections 11 and 12 of House Bill 339 of the 1945 Legislature of the State of Oklahoma or any amendment thereto.

XXVII

Subscribers

Provision is made below for the signing of this Plan of Unitization by Lessees within the Unit Area who wish to expressly signify their agreement to the terms, provisions and conditions hereof. Such Lessees may sign either as Unqualified or Qualified Subscribers. Those signing as Unqualified Subscribers agree to all the terms, provisions and conditions hereof, including the agreement to participate in carrying the Lessees who elect to be carried under the provisions of Section XI. Those signing as Qualified Subscribers agree to all the terms, provisions and conditions hereof, except that they reserve the right to be carried in respect to the payment of Unit Expense as is provided in Section XI and do not agree to participate in carrying the other Lessees who elect to be carried under the terms of said Section. This Plan of Unitization may be so signed by the subscribers hereto at any time, the original of which shall at all times from and after the approval hereof by the Commission remain on file in the office of the Secretary of the Commission. In lieu of signing the original of this Plan of Unitization, any Lessee desiring to subscribe hereto, either as an Unqualified or Qualified Subscriber, may do so by separate instrument filed with the Secretary of the Commission, all with the same effect as if such Lessees signed the original.

The signing hereof by any Lessee shall be binding upon the heirs, personal representatives, successors and assigns of such Lessees.

The signing hereof by each of the subscribers hereto is

conditioned upon the approval of this Plan of Unitization by the Corporation Commission.

The signing hereof by the Unqualified Subscribers is further conditioned upon the signing hereof by Unqualified Subscribers who, under this Plan of Unitization based on present lease ownership, will own sixty-five per cent (65%) or more in interest in the Unit.

UNQUALIFIED SUBSCRIBERS:

AMERADA PETROLEUM CORPORATION

By _____

Attest:

ANDERSON-PRICHARD OIL CORPORATION

By _____

Attest:

CITIES SERVICE OIL COMPANY

By _____

Attest:

FOSTER PETROLEUM CORPORATION

By _____

Attest:

GULF OIL CORPORATION

By _____

Attest:

MAGNOLIA PETROLEUM COMPANY

By _____

Attest:

PALMER OIL CORPORATION

By _____

Attest:

PHILLIPS PETROLEUM COMPANY

By _____

[Continued on p. 174]

Attest:

RAY STEPHENS, INC.
By

Attest:

STEPHENS PETROLEUM COMPANY
By

Attest:

SUNRAY OIL CORPORATION
By

Attest:

QUALIFIED SUBSCRIBERS:

By

Attest:

By

Attest:

By

Attest:

(Here follows map, Exhibit A, fol. 144)

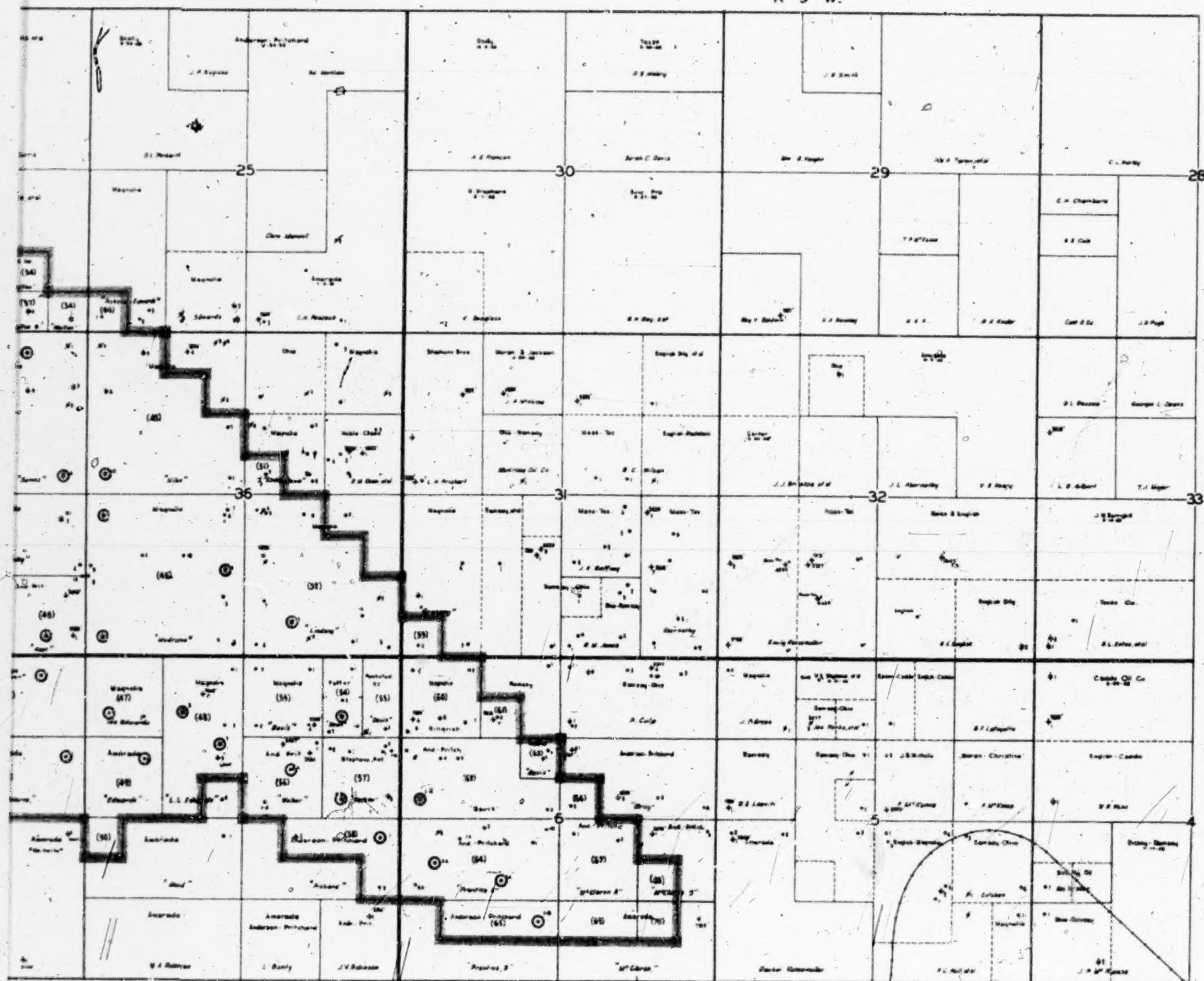


EXHIBIT "D"

Operator, Lease and Well	Tract Number	Assigned Value of Well
Amerada Petroleum Corporation		
Beemer #1.....	15	\$59,038
Edwards #1.....	49	53,899
Hartshorn #1.....	43	57,995
Hartshorn #2.....	43	58,986
Anderson-Prichard Oil Corporation		
Davis #1-A.....	62	20,483
Hays #1.....	40	20,387
Pickard #1.....	58	51,198
Prentice "A" #3.....	64	52,240
Prentice "A" #4.....	64	50,924
Prentice "B" #1.....	65	53,686
Walker #2.....	56	52,168
Gulf Oil Corporation		
Pell #1.....	5	50,125
Sherritt #1.....	14	55,586
Sherritt #2.....	14	52,920
Sherritt #3.....	14	52,929
Sherritt #4.....	14	59,073
Magnolia Petroleum Company		
I. Edwards #2.....	47	54,085
L. L. Edwards #5.....	48	20,955
L. L. Edwards #7.....	48	20,869
Cement-Henley #5.....	39	20,185
Lindsay #12.....	52	17,323
Medrano #6.....	46	16,632
Medrano #7.....	46	14,993
Medrano #11.....	46	19,458
Niles #10.....	45	13,826
Sames #6.....	38	14,022
Sames #8.....	38	13,666
Palmer Oil Corporation		
Sterba #3.....	31	17,730
Sterba #4.....	31	55,064
Sterba #7.....	31	55,126
Phillips Petroleum Company		
Farwell #4.....	28	14,494
Fletcher #5.....	18	17,968
Fletcher #6.....	18	54,832
Fletcher #7.....	18	49,154
Garn "A" #5.....	27	14,188
Hartshorn #1.....	42	51,693
Hartshorn #2.....	42	54,989
Margaret #1.....	32	56,908
Oaks #1.....	26	18,186
Oaks #2.....	26	53,835
Oaks #3.....	26	55,329
Oaks #4.....	26	53,771
Potter		
Davis #1.....	54	19,632

EXHIBIT "D"—Continued

Operator, Lease and Well	Tract Number	Assigned Value of Well
Ray Stephens, Inc.		
Melton 1, #1	36	14,319
Wilhite #3	10	19,116
Farwell #2	16	15,812
Stephens Petroleum Company		
Pierson #1	41	21,797
Plummer W/2, #3	19	57,669
Plummer E/2, #4	20	56,107
Plummer E/2, #5	20	57,663
Pohleman #1	6	56,837
Samwill #1	9	50,090
Pell #1	4	56,625
Walker #1	57	57,834
Sunray Oil Corporation		
Dixon #1-A	29	16,376
Loose #3	23	15,376
Total		\$2,165,571

EXHIBIT "B"

Part II

For the purpose of this exhibit:

(a) The following amounts of the Unit Production of Oil shall be regarded as "*Normal Production*" for the years shown opposite the amounts so named:

Year Following Effective Date	Daily Average in Barrels
1st year	5,225 Barrels
2nd year	5,075 "
3rd year	4,925 "
4th year	4,775 "
5th year	4,775 "
6th year	4,203 "
7th year	3,872 "
8th year	3,788 "

(b) All Unit Production of Oil in excess of said Normal Production shall be regarded as "*Excess Production*".

(c) "*Time of Acceleration*" shall mean and include the time from the Effective Date to the end of five consecutive periods, each consisting of 12 calendar months, with the exception that any month shall not be counted as a month fixing the term of each such period if the Unit Production of Oil during such month is less than the Normal Production as a sole and direct consequence of a statewide production order of the Corporation Commission. The five periods aforesaid shall be designated consecutively as Periods 1, 2, 3, 4 and 5.

(d) "*Time of Deceleration*" shall mean and include the time from the end of the Time of Acceleration and continuing until such time as the total number of additional barrels of Oil allocated to Separately Owned Tracts numbered 56, 57, 58, 64 and 65 during the Time of Acceleration as hereinafter provided, is offset by a like number of barrels of Oil allocated to the other Separately Owned Tracts during such Time of Deceleration, as hereinafter provided.

During the Time of Acceleration the Normal Production of Oil as hereinabove defined shall be allocated to all the several Separately Owned Tracts within the Unit Area in proportion to their respective percentages of interest shown in Part I of this Exhibit.

The Excess Production, if any, in any month during the Time of Acceleration and if sufficient for that purpose, shall be allocated to Separately Owned Tracts numbered 56, 57, 58, 64 and 65 in such amounts as to allocate to each such Separately Owned Tract the following amounts of Oil in excess of the number of barrels of Normal Production allocated to such Separately Owned Tracts.

Number of Period	Percent in Excess of Normal
1	100%
2	75%
3	50%
4	25%
5	10%

If the Excess Production in any month during the Time of Acceleration exceeds the amount required to satisfy the aforesaid increased allocations to the 5 Separately Owned Tracts last hereinabove named, the excess shall be allocated to all of the several Separately Owned Tracts within the Unit Area in proportion to their respective percentages of interest as shown in Part I of this Exhibit.

If the Excess Production, if any, in any month during the Time of Acceleration is not sufficient to satisfy in full the aforesaid increased allocations to the 5 Separately Owned Tracts hereinabove named, then and in that event the amount of such Excess Production shall be allocated to said 5 Separately Owned Tracts in the proportion that the percentage of interest of each such tract bears to the sum of the percentages of interest of all of said 5 Tracts, as shown in Part I of this Exhibit.

During the Time of Deceleration the amount of the Unit Production of Oil allocated each month to the 5 Separately Owned Tracts hereinabove specifically named, shall be 50% of their respective percentages of interest as shown in Part I of this Exhibit, until such time as the total accumulated number of barrels of Oil so withheld from such tracts by reason of said 50% reduction in percentage shall exactly equal the total accumulated number of additional barrels of Oil allocated to said tracts by reason of the special increase in allocation granted such tracts during the Time of Acceleration as hereinabove provided. The Unit Production of Oil so withheld from said 5 Separately Owned Tracts hereinabove specifically named by reason of said 50% reduction in the percentage allocation to such tracts shall be allocated to the other Separately Owned Tracts in the Unit Area, exclusive of the 5 tracts hereinabove specifically named, in the proportion that the percentages of interest of each bears to the sum of the percentages of interest of all such other tracts, exclusive of the 5 specifically named tracts, as shown in Part I of this Exhibit.

After the End of the Time of Deceleration all Unit Production shall be allocated to all the several Separately

Owned Tracts within the Unit Area in proportion to their respective percentages of interest as shown in Part I of this Exhibit.

EXHIBIT "C"

ACCOUNTING PROCEDURE

The term "joint property" as herein used shall be construed to mean the Unit Area covered by the Plan of Unitization to which this "Accounting Procedure" is attached, together with any processing or other plants and facilities used in the development and operation of such Unit Area.

The term "Operator" as herein used shall be construed to mean the Unit Operator designated to conduct the development and operation of the joint property for the joint account.

I—Development and Operating Charges

Subject to limitations hereinafter prescribed, Operator shall charge the joint account with the following items:

- (1) Delay or other rentals, when such rentals are paid by Operator for the joint account.
- (2) Labor, teaming and other services necessary for the development, maintenance and operation of the joint property.
- (3) Materials, equipment and supplies purchased or furnished by Operator from its warehouse stocks or from its other leases for use on the joint property. Insofar as is practical and consistent with efficient and economical operation, only such materials shall be purchased for or transferred to the joint property as are required for immediate use, and the accumulation of warehouse or lease stock on the joint property shall be avoided.

- (4) Moving materials to the joint property from vendor's or from Operator's warehouse in the district or from other properties of Operator, but in either of the last events no charge shall be made to the joint account for a

distance greater than the distance from the nearest reliable supply store or railway receiving point.

(5) Moving surplus materials from the joint property to outside vendees, if sold f. o. b. destination, or minor returns to Operator's warehouse or other storage point. No charge shall be made to the joint account for moving major surplus materials to Operator's warehouse or other storage point for a distance greater than the distance to the nearest reliable supply store or railway receiving point, except by authority of the Operating Committee; and no charge shall be made to the joint account for moving materials to other properties belonging to Operator, except by authority of the Operating Committee.

(6) Use of and service by Operator's exclusively owned equipment and utilities as provided in Paragraph (6) of Section II: "Basis of Charges to Joint Account."

(7) Damages or losses incurred by fire, flood, storm or from any other cause not controllable by Operator through the exercise of reasonable diligence. Operator shall furnish the Operating Committee written notice of damages or losses incurred by fire, storm, flood or other natural or accidental causes as soon as practicable after report of the same has been received by Operator.

(8) Expenses of litigation, liens, judgments and liquidated claims involving the joint property or incident to its development and operation. Actual expenses incurred by Operator in securing evidence pertaining to the joint property shall be a proper charge against the joint account.

(a) When any case, by prior agreement, is handled by Operator's legal staff, thereby eliminating the retaining of outside counsel, a charge commensurate with the cost of services rendered may be made to the joint account. Charges of this nature shall not be rendered until the Operating Committee has approved the amount thereof.

(b) Fees and expenses of outside attorneys shall not be charged to the joint account except where the employment of such outside attorneys is authorized by the Operating Committee.

(9) All taxes paid for the benefit of the parties in in-

terest including ad valorem, property, gross production, occupation and any other taxes assessed against the jointly-owned properties, the production therefrom or the operations thereon.

(10) Insurance:

(a) Premiums paid for insurance carried for the benefit of the joint account together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments and other expenses, including legal services, not recovered from insurance carrier.

(b) If no insurance is required to be carried, all actual expenditures incurred and paid by Operator in settlement of any and all losses, claims, damages, judgments and any other expenses, including legal services, shall be charged to the joint account.

(11) Overhead:

In lieu of any charge for the salaries and expense of officers and employees of Operator other than employees directly assigned to the operation of the joint property and employees performing special work pursuant to authority of the Operating Committee, and, in lieu of any charge for office and camp expense other than the expense of a field office or camp, if any, required for the operation of the joint property, the Operator shall have the right to charge the joint account with the following overhead charges:

(a) \$150.00 per month for each drilling well, beginning on the date the well is spudded and terminating when it is on production or is plugged, as the case may be, except that no charge shall be made during suspension of drilling operations for fifteen (15) or more consecutive days.

(b) \$50.00 per well per month for the first ten (10) producing wells.

(c) \$40.00 per well per month for the second ten (10) producing wells.

(d) \$25.00 per well per month for all producing wells over twenty (20).

(e) \$20.00 per well per month for injection wells.

(f) An allowance to be agreed upon between the Operator and Operating Committee with respect to the construction and operation of any gas injection plant and facilities if and when the construction and operation thereof is authorized.

In connection with overhead charges, the status of wells shall be as follows:

(1) Producing gas wells shall be included in overhead schedule the same as producing oil wells.

(2) Wells permanently shut down but on which plugging operations are deferred, shall be dropped from overhead schedule at the time the shutdown is effected. When such wells are plugged, overhead shall be charged at the producing well rate during the time required for plugging operation.

(3) Wells being plugged back or drilled deeper shall be included in overhead schedule the same as drilling wells.

(4) If and when a well is temporarily shut down (other than for proration) and not produced or worked upon for a period of a full calendar month, it shall not be included on the overhead schedule for such month.

(5) Salt water disposal wells shall not be included in overhead schedule.

The above specific overhead rates are subject to adjustment and shall be amended from time to time by agreement between Operator and the Operating Committee if, in practice, they are found to be insufficient or excessive.

(12) Warehouse Handling Charges: None.

(13) Any other expenditures incurred by Operator for the necessary and proper development, maintenance, and operation of the joint property, except that Operator shall not charge the joint account with any expenditure or contribution made by Operator towards employees' stock purchase plan, group life insurance, pension, retirement, or bonus, other than such expenditures or contributions imposed or assessed by governmental authority.

II—Basis of Charges to Joint Account

(1) **Outside Purchases:** All materials and equipment purchased and all service procured from outside sources shall be charged at their actual cost to Operator, after deducting any and all trade or cash discounts actually allowed off invoices, or received by Operator.

(2) **New materials furnished by Operator (Condition "A"):**

New materials transferred to the joint property from Operator's warehouse or other properties shall be priced f. o. b. the nearest supply store or railway receiving point at replacement cost of the same kind of materials. This will include large equipment such as tanks, rigs, pumps, boilers and engines. All tubular goods (2" or over) shall be charged on the basis of mill shipment or carload price. Other materials, where the replacement cost cannot be readily ascertained, may, for the purposes of consistency and convenience, be charged on the basis of a reputable supply company's preferential list price f. o. b. nearest supply store or railway receiving point to the joint property prevailing on the date of transfer of the materials to the joint property.

In determining the value of any transferred materials, all special and preferential discounts shall be allowed but the regular cash discount shall not be considered.

(3) **Secondhand materials furnished by Operator (Conditions "B" and "C"):**

(a) Tubular goods (2" and over), fittings, machinery and other equipment which is in sound and serviceable condition at date of transfer, will be classed as condition "B" and charged at 75% of the price of new materials, in accordance with the provisions of Paragraph (2) above.

(b) Tanks, derricks, and buildings or other equipment involving erection costs shall be charged on a basis not to exceed 75% of knocked-down new price for similar materials.

(c) Other secondhand materials, such as units of machinery or other equipment that is serviceable, but substantially not good enough to be considered first-class secondhand material when transferred to the joint property, shall be classed as condition "C" and charged at 50% of the new price.

(d) There may also be cases where some items of equipment, due to their unusual condition, should be fairly and equitably priced by Operator.

(4) **Warranty of Materials Furnished by Operator:** Operator does not warrant the materials furnished from its warehouse or other properties beyond or back of the dealers' or manufacturer's guaranty, and in case of defective materials, credits shall not be passed until adjustment has been received by Operator from the manufacturers or their agents.

(5) If materials required are not available in Operator's surplus stocks, Operator shall whenever in its judgment it is practical to do so, give to other lessees within the Unit Area opportunity of furnishing the materials required in proportion to their interest, provided that the same can be furnished at the time such materials are required, and further provided that any such materials so furnished shall be in condition acceptable to Operator and shall be charged to the joint account on the same terms and conditions as are provided herein to cover the furnishing of materials by Operator.

(6) **Operator's Exclusively-owned Facilities:** The following rates shall apply to service rendered to the joint property by facilities owned exclusively by Operator:

(a) Water service, gas, teaming, power, and compressor service: All at rates currently prevailing in the field where the joint property is located.

(b) **Automotive Equipment:** Rates commensurate with cost of ownership and operation and in line with schedule of rates adopted by the Petroleum Motor Transport Association as recommended uniform standardized charges against the joint account: Automotive charges will be based on use in actual service on or in connection with

the joint property. Truck, tractor and pulling unit rates shall include wages and expenses of driver.

(c) A fair rate shall be charged for the use of drilling and cleaning-out tools and any others items of Operator's fully-owned machinery or equipment which shall be ample to cover maintenance, repairs, depreciation and the service furnished the joint property. Provided, however, that such charges shall not exceed those currently prevailing in the field where the joint property is located.

(d) Whenever requested, Operator shall inform the other lessees within the Unit Area in advance of the rates it proposes to charge.

(e) Rates shall be revised and adjusted from time to time when found to be either excessive or insufficient.

III—Disposal of Lease Equipment and Materials

(1) Materials purchased by Operator shall be credited to the joint account and included in the monthly statement of operations for the month in which the materials are removed from the joint property.

(2) Materials purchased by other lessees within the Unit Area shall be invoiced by Operator and paid for by such lessees to Operator immediately following receipt of invoice and delivery of materials. Operator shall thereupon immediately pass credit to the joint account and include the same in the monthly statement of operations for the month in which the materials were paid for by such lessees.

(3) Division of materials in kind, if made between Operator and other lessees within the Unit Area shall be in proportion to their respective interests in the joint property. Each party will thereupon be charged individually with the value of the materials received or receivable and corresponding credits will be made to the joint account by the Operator, and, both credits shall appear in the same monthly operating statement.

(4) Sales to outsiders of major materials shall be made only with the approval of the Operating Committee as to both terms and price and where made the proceeds shall

be credited by Operator to the joint account at the full amount collected from vendee. Any claims by vendee for defective materials or otherwise shall be charged back to the joint account, if and when paid by Operator.

IV—Basis of Pricing Materials Transferred from Joint Account

Materials and equipment purchased by either Operator or the lessees in the Unit Area, or divided in kind between them, unless otherwise approved by the Operating Committee, shall be valued on the following basis of condition and price: (New price used in the following paragraphs shall have the same meaning and application as that used above in Section II: "Basis of Charges to Joint Account").

(1) New Materials: (Condition "A") being new equipment or supplies purchased or procured from the joint property but never used thereon; at 100% of current new prices.

(2) Good Secondhand Materials: (Condition "B") being good serviceable materials which are further usable without repair, at:

(a) 75% of current new prices, if materials were new when originally charged to the joint property.

(b) 75% of current new prices less depreciation consistent with their usage on and service to the joint property, if materials were originally charged to the joint property as secondhand at 75% of new prices.

(3) Other Used Materials: (Condition "C") being materials further usable for their original function only after repair and reconditioning; at 50% of current new prices.

(4) Bad Order Materials: (Condition "D") being materials not further usable for their original function but for possible other service; at 25% of current new prices.

(5) Junk: (Condition "E") being obsolete and unserviceable materials; at prevailing junk prices in the district. Where practicable, junk should be disposed of at the joint property.

(6) Temporarily Used Materials: When the use of cer-

tain items of equipment on the joint property has been only temporary, and the time of actual use thereon does not justify the deduction of depreciation as listed in (a) and (b) of Paragraph (2) hereof, such materials will be priced on a basis that will leave a net charge against the joint account consistent with the service rendered and adequate for the time the materials were in use.

V—Inventories

Periodic inventories of the materials and equipment of the joint property, which shall include such materials and equipment as are ordinarily considered controllable by Operators of oil and gas properties, shall be taken by Operator at such times and under such conditions as may be prescribed by the Operating Committee.

EXHIBIT "B"

Part I

Tract Number	Lease Name	Legal Description	Sec.	Twp.	Range	Operator	Percentage of Interest in Unit
1	Odla-Table	S/2 SE NE	29	6N	10W	Ray Stephens, Inc.	0.18442%
2	Dome-Bo	NE SE & NE SE SE	29	6N	10W	Stephens Petroleum Co.	0.78785
3	Brown	S/2 SW NW & SW SE NW	28	6N	10W	Stephens Petroleum Co.	0.08253
4	Pell	W/2 SW	28	6N	10W	Stephens Petroleum Co.	3.51358
5	Pell	E/2 SW	28	6N	10W	Gulf Oil Corporation	2.65959
6	Pohleman	NE NW & NE SE NW & NE NW NW	33	6N	10W	Stephens Petroleum Co.	1.96799
7	Wilhite	N/2 SE less SW NE SE	28	6N	10W	Ray Stephens, Inc.	0.07288
8	Wilhite	SW NE SE	28	6N	10W	Ray Stephens, Inc.	0.01154
9	Samwill	W/2 SW SE & SE SW SE & SW SE SE	28	6N	10W	Stephens Petroleum Co.	1.18366
10	Wilhite	NE SW SE	28	6N	10W	Ray Stephens, Inc.	0.04615
11	Wilhite	NW SE SE	28	6N	10W	Ray Stephens, Inc.	0.01540
12	Wilhite	NE SE SE	28	6N	10W	Ray Stephens, Inc.	0.01749
13	Wilhite	SE SE SE	28	6N	10W	Ray Stephens, Inc.	0.02700
14	Sherritt	NE/4 less SW SW NE	33	6N	10W	Gulf Oil Corporation	13.11109
15	Beemer	NE SE less SW NE SE	33	6N	10W	Amerada Petroleum Co.	1.12313
16	Farwell	NW SW & NE SW SW & S/2 NE SW & NE SE SW	27	6N	10W	Ray Stephens, Inc.	0.07715
17	Farwell-Becker	S/2 SW SW & W/2 SE SW	27	6N	10W	Stephens Petroleum Co.	0.11581
18	Fletcher	NW/4	34	6N	10W	Phillips Petroleum Co.	5.37390
19	Plummer-W/2	NW SW & NE SW SW	34	6N	10W	Stephens Petroleum Co.	4.09025
20	Plummer-E/2	E/2 SW less SW SE SW	34	6N	10W	Stephens Petroleum Co.	6.86555
21	Griffin	S/2 NW SE	27	6N	10W	Ray Stephens, Inc.	0.00828
22	Griffin	S/2 NE SE	27	6N	10W	Ray Stephens, Inc.	0.00163
23	Loose	S/2 SE	27	6N	10W	Sunray Oil Corporation	0.31227
24	Ulrey	N/2 NE	34	6N	10W	Sunray Oil Corporation	0.43240
25	Garrison	S/2 NE	34	6N	10W	Sunray Oil Corporation	0.31484
26	Oaks	SE/4	34	6N	10W	Phillips Petroleum Co.	11.21393
27	Garn "A"	SE SE SW	26	6N	10W	Phillips Petroleum Co.	0.02277
28	Farwell	N/2 NW	35	6N	10W	Phillips Petroleum Co.	0.18958
29	Dixon	S/2 NW	35	6N	10W	Sunray Oil Corporation	0.52429
30	Sterba (below 6000')	SW/4	35	6N	10W	Gulf Oil Corporation	2.15688
31	Sterba (above 6000')	SW/4	35	6N	10W	Palmer Oil Corporation	5.51614
32	Margaret	N/2 NW less SW NW NW	2	5N	10W	Phillips Petroleum Co.	3.87549
33	Holland	NE SE NW	2	5N	10W	Gulf Oil Corporation	0.06049
34	Melton	NW SW SE & SE SW SE & NW SE SE & SE SE SE	26	6N	10W	Ray Stephens, Inc.	0.02614
35	Melton No. 2	NE SW SE	26	6N	10W	Ray Stephens, Inc.	0.00198

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EXHIBIT "B"

Part I

Tract Number	Lease Name	Legal Description	Sec.	Twp.	Range	Operator	Percentage of Interest in Unit
36	Melton No. 1	SW SW SE	26	6N	10W	Ray Stephens, Inc.	0.01211
37	Melton No. 4	SW SE SE	26	6N	10W	Ray Stephens, Inc.	0.01693
38	Sames	NE/4	35	6N	10W	Magnolia Petroleum Co.	0.57283
39	Cement-Henley	N/2 SE & N/2 SW SE	35	6N	10W	Magnolia Petroleum Co.	1.59617
40	Hays	SE SE	35	6N	10W	Anderson-Pritchard Oil Corp.	0.58977
41	Pierson	S/2 SW SE	35	6N	10W	Stephens Petroleum Co.	1.47267
42	Hartshorn	N/2 NE	2	5N	10W	Phillips Petroleum Co.	8.23583
43	Hartshorn	S/2 NE less SW SW NE	2	5N	10W	Amerada Petroleum Corp.	4.03085
44	Pickard Edwards	SW SW SW	25	6N	10W	Magnolia Petroleum Co.	0.00422
45	Niles	NW NW & S/2 NW & SW NE NW	36	6N	10W	Magnolia Petroleum Co.	0.36728
46	Medrano	SW/4	36	6N	10W	Magnolia Petroleum Co.	0.59865
47	I. Edwards	NW NW	1	5N	10W	Magnolia Petroleum Co.	2.36562
48	L. L. Edwards	E/2 NW	1	5N	10W	Magnolia Petroleum Co.	1.86102
49	Edwards	SW NW	1	5N	10W	Amerada Petroleum Co.	3.54720
50	Wood	NW NW SW	1	5N	10W	Amerada Petroleum Co.	0.18412
51	Caddo-Rowe	SW SW NE	36	6N	10W	Magnolia Petroleum Co.	0.00495
52	Lindsay	S/2 SE & NW SE & SW NE SE	36	6N	10W	Magnolia Petroleum Co.	0.31433
53	Davis	NW NE	1	5N	10W	Magnolia Petroleum Co.	0.34024
54	Davis	W/2 NE NE	1	5N	10W	Potter	0.06642
55	Davis	E/2 NE NE	1	5N	10S	F. L. Rookstool	0.03249
56	Walker	SW NE	1	5N	10W	Anderson-Pritchard Oil Corp.	1.55533
57	Walker	SE NE	1	5N	10W	Stephens Petroleum Co.	1.18658
58	Pickard	N/2 NE SE & SE NE SE & NE NW SE	1	5N	10W	Anderson-Pritchard Oil Corp.	1.09412
59	Gregory	SW SW SW	31	6N	9W	Magnolia Petroleum Co.	0.00329
60	Gingrich	NW NW	6	5N	9W	Magnolia Petroleum Co.	0.02882
61	Gingrich	SW NE NW	6	5N	9W	Stanolind Oil & Gas Co.	0.00133
62	Davis	SW NW & S/2 SE NW & NW SE NW	6	5N	9W	Anderson-Pritchard Oil Corp.	0.40951
63	Davis	NE SE NW	6	5N	9W	Lloyd Noble	0.00073
64	Prentice "A"	N/2 SW	6	5N	9W	Anderson-Pritchard Oil Corp.	2.58742
65	Prentice "B"	N/2 SE SW & NE SW SW	6	5N	9W	Anderson-Pritchard Oil Corp.	0.52078
66	Wray	SW SW NE	6	5N	9W	Anderson-Pritchard Oil Corp.	0.00065
67	McClaren "A"	NW SE	6	5N	9W	Anderson-Pritchard Oil Corp.	0.06316
68	McClaren "B"	SW NE SE	6	5N	9W	Anderson-Pritchard Oil Corp.	0.01446
69	McClaren	N/2 SW SE	6	5N	9W	Amerada Petroleum Co.	0.13116
70	McClaren	NW SE SE	6	5N	9W	Amerada Petroleum Co.	0.02458
71	Garn "B"	S/2 NW SW & SW SW & W/2 SE SW & NE SE SW	26	6N	10W	Phillips Petroleum Co.	0.04096
72	Farwell #2	SE SE SW & NW SW SW	27	6N	10W	Ray Stephens, Inc.	0.13935
TOTAL							100.0000%

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NOTE: All leases are subject to the adjustment outlined in Exhibit "B"—Part II.

APPENDIX "F"**OIL AND GAS LEASE OWNED BY THE PALMER OIL CORPORATION, WITH ROYALTY RIGHTS OWNED BY PAUL STERBA AND PAUL STERBA, JR.**

Filed for record Feb. 26, 1936 at 11:00 A. M. R. L. Good-fellow County Clerk (Seal)

OIL & GAS LEASE

Agreement, made and entered into the 12th day of February, 1936, by and between Paul Sterba and wife, Gertrude K. Sterba, and Helen Catherine Jackson, nee Sterba, and husband Clifford Jackson, of Kay County & Canadian County, Oklahoma, hereinafter called lessor (whether one or more) and Chris Pearson, hereinafter called lessee:

Witnesseth: That the said lessor, for and in consideration of One & No/Dollars, cash in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on part of lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee for the sole and only purpose of mining and operating for oil and gas and of laying of pipe lines, and of building tanks, powers, stations and structures thereon to produce save and take care of said products, all that certain tract of land situate in the county of Caddo, State of Oklahoma, described as follows, to-wit:

The Southwest Quarter, of Section 35, Township 6 N, Range 10 W, and containing 160 acres, more or less.

It is agreed that this lease shall remain in force for a term of five years from this date, and as long thereafter as oil or gas or either of them is produced from said land by lessee.

In consideration of the premises the said lessee covenants and agrees:

1st. To deliver to the credit of lessor, free of cost, in the pipe line to which lessee may connect wells on said

land, the equal one-eighth part of all oil produced and saved from the leased premises.

2nd. To pay lessor one-eighth ($\frac{1}{8}$) of the gross proceeds each year, payable quarterly for the gas from each well where gas only is found, while the same is being used off the premises and if used in the manufacture of gasoline a royalty of one-eighth ($\frac{1}{8}$) payable monthly at the prevailing market rate for gas; and lessor to have gas free of cost from any such well for all stoves and all inside lights in the principal dwelling on said land during the same time, by making lessor's own connections with the well at lessor's own risk and expense.

3rd. To pay lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of one-eighth ($\frac{1}{8}$) of the proceeds, at the mouth of the well, payable monthly at the prevailing market rate.

If no well be commenced on said land on or before the 12th day of February, 1937, this lease shall terminate as to both parties, unless the lessee shall on or before that date pay or tender to the lessor or to the lessor's credit in the The Security Bank at Ponca City, Okla., or its successors, which shall continue as the depository regardless of changes in the ownership of said land, the sum of One hundred sixty & No/100 Dollars which shall operate as a rental and cover the privilege of deferring the commencement of a well for twelve months from said date. The payment herein referred to may be made in currency, draft or check at the option of the lessee; and the depositing of such currency, draft or check in any post office, with sufficient postage and properly addressed to the lessor, or said bank, on or before said last mentioned date, shall be deemed payment as herein provided. In like manner and upon like payments or tenders, the commencement of a well may be further deferred for like periods of the same number of months successively.

And it is understood and agreed that the consideration first recited herein, the down payment, covers, not only the privilege granted to the date when said first rental is

payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be a dry hole, then and in that event, if a second well is not commenced on said land within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals, in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payment of rentals as above provided, that the last preceding paragraph hereof governing the payment of rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments, and if the lessee shall commence to drill a well within the terms of this lease or any extension thereof, the lessee shall have the right to drill such well to completion with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in force with like effect as if such well had been completed within the term of years first mentioned.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said lessor only in the proportion which lessor's interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for lessee's operations thereon, except water from the wells of lessor.

When requested by lessor, lessee shall bury lessee's pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of lessor.

Lessee shall pay for damages caused by lessee's operations to growing crops on said land.

Lessee shall have the right at any time to remove all

machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignments of rental or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof and it is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands, upon which the said lessee or any assignee thereof shall make due payment of said rental, and this lease shall never be forfeited for non-payment of any rental due until after at least ten days written notice by registered mail or in person shall have been given the lessee.

Lessor hereby warrants and agrees to defend the title to the lands herein described and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof, and the undersigned, lessors, for themselves and their heirs, successors, and assigns, hereby surrender and release all right of dower and homestead in the premises described herein, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made as recited herein.

In Testimony Whereof We Sign, this the 12th day of February, 1936.

HELEN CATHERINE JACKSON	(s)
CLIFFORD JACKSON	(s)
PAUL STERBA	(s)
GERTRUDE K. STERBA	(s)

STATE OF OKLAHOMA,

County of Canadian, SS:

Be it remembered, That on this 12th day of February A. D. 1936, before me, a Notary Public in and for said County and State, personally appeared Helen Catherine Jackson, nee Sterba, and Clifford Jackson, her husband, to me known to be the identical persons described in and who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my official signature and affixed my notarial seal, the day and year first above written.

(SEAL) H. C. KIMNER, *Notary Public.*

My commission expires January 2nd, 1938.

STATE OF OKLAHOMA,

County of Kay, SS:

Before me, the undersigned, a Notary Public within and for said County and State on this 13 day of February, 1936, personally appeared Paul Sterba and wife, Gertrude K. Sterba, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

(SEAL) J. R. MEER, *Notary Public.*

My commission expires Feb. 14, 1936.

APPENDICES "G" and "H"

APPLICATION TO ASSUME ORIGINAL JURIS-
DICTION

and

PETITION FOR WRIT OF PROHIBITION OR OTHER
PROPER RELIEFIN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

No. —————

PAUL STERBA AND PAUL STERBA JR., A MINOR, BY AND
THROUGH HIS FATHER AND NEXT FRIEND, PAUL STERBA,
AND THE PALMER OIL CORPORATION, A CORPORATION,
Petitioners,

vs.

CORPORATION COMMISSION OF OKLAHOMA, CONSISTING OF
REFORD BOND, RAY O. WEEMS AND RAY C. JONES; PHILLIPS
PETROLEUM COMPANY, A CORPORATION; AMERADA PETRO-
LEUM CORPORATION, A CORPORATION; ANDERSON-PRICHARD
OIL CORPORATION, A CORPORATION; RAY STEPHENS, INC., A
CORPORATION; STEPHENS PETROLEUM COMPANY, A CORPORA-
TION; GULF OIL CORPORATION, A CORPORATION; MAGNOLIA
PETROLEUM COMPANY, A CORPORATION; CITIES SERVICE OIL
COMPANY, A CORPORATION; FOSTER PETROLEUM CORPORA-
TION, A CORPORATION; AND SUNRAY OIL CORPORATION, A
CORPORATION,

Defendants.

APPLICATION TO ASSUME ORIGINAL JURISDICTION

Come now, Paul Sterba and Paul Sterba, Jr., a minor,
by and through his father and next friend, Paul Sterba,
and The Palmer Oil Corporation, and respectfully pray

this Court to assume jurisdiction in an original proceeding under the petition for a Writ of Prohibition and other proper relief, copy of which petition is attached hereto, for the following reasons:

First: That the relief sought is against the Corporation Commission of the State of Oklahoma, and other defendants above named, who are acting as a "Unit Committee" under the jurisdiction of said Commission, to prevent and prohibit the enforcement of the Commission's Order No. 20289, which purported to create the "West Cement Medrano Unit" of the West Cement Field of Caddo County, Oklahoma, pursuant to House Bill No. 339 of the 1945 Oklahoma Legislature (O. S. Supp. 1947, Title 52, Sec. 286.1 to 286.17).

Second: That the action of the "Commission" and the "Unit Committee" is without authority of law and has been and will continue to be acts of judicial nature which are excessive, arbitrary and unreasonable, and that the applicants herein have suffered and will continue to suffer irreparable injury and damages.

Third: That the questions involved in said petition are of great public interest and that applicants have no speedy or adequate remedy in the State Court, Federal Court, or before the Commission to prevent their irreparable injury and damage.

Brief in support of this application and the petition referred to are filed herewith.

CLAUDE MONNET,
COLEMAN H. HAYES,
MART BROWN,
MARK H. ADAMS,
CHARLES E. JONES,
WILLIAM I. ROBINSON,
By _____
Attorneys for petitioners.

Address of attorneys: Claude Monnet, Coleman H. Hayes, Mart Brown, 1719 First National Bank Building, Oklahoma City, Oklahoma; Mark H. Adams, Charles E.

Jones, William I. Robinson, 1008 Brown Building, Wichita,
Kansas.

IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

No.

PAUL STERBA AND PAUL STERBA, JR., A MINOR, BY AND
THROUGH HIS FATHER AND NEXT FRIEND, PAUL STERBA,
AND THE PALMER OIL CORPORATION, A CORPORATION,
Petitioners,

vs.

CORPORATION COMMISSION OF OKLAHOMA, CONSISTING OF
REFORD BOND, RAY O. WEEMS AND RAY C. JONES; PHILLIPS
PETROLEUM COMPANY, A CORPORATION; AMERADA PETRO-
LEUM CORPORATION, A CORPORATION; ANDERSON-PRICHARD
OIL CORPORATION, A CORPORATION; RAY STEPHENS, INC., A
CORPORATION; STEPHENS PETROLEUM COMPANY, A CORPO-
RATION; GULF OIL CORPORATION, A CORPORATION; MAGNOLIA
PETROLEUM COMPANY, A CORPORATION; CITIES SERVICE OIL
COMPANY, A CORPORATION; FOSTER PETROLEUM CORPO-
RATION, A CORPORATION; AND SUNRAY OIL CORPORATION, A
CORPORATION,

Defendants.

PETITION FOR WRIT OF PROHIBITION OR OTHER PROPER RELIEF

Come now Paul Sterba, Paul Sterba, Jr., a minor by and through his father and next friend, Paul Sterba, and The Palmer Oil Corporation, petitioners herein, and respectfully represent and show to this Honorable Court as follows:

First: That your petitioners, Paul Sterba and Paul Sterba, Jr., a minor, are residents of Ponca City, Kay County, Oklahoma, and will hereinafter be referred to as "Sterbas"; that petitioner, The Palmer Oil Corporation, is a corporation duly organized and existing under the laws of the State of Kansas and licensed to transact busi-

ness within the State of Oklahoma and will be herein-after referred to as "Palmer".

That the defendants, Reford Bond, Ray O. Weems and Ray C. Jones are the duly elected, qualified and acting Commissioners of the Corporation Commission of Oklahoma and as such constitute and will be hereinafter referred to as the "Commission". That the defendants, Phillips Petroleum Company, Amerada Petroleum Corporation, Ray Stephens, Inc., Stephens Petroleum Company, Cities Service Oil Company, Sunray Oil Corporation and Foster Petroleum Corporation are each corporations duly organized and existing under and by virtue of the laws of the State of Delaware and are each duly licensed to transact business within the State of Oklahoma; that the defendant, Anderson-Prichard Oil Corporation is duly organized and existing under and by virtue of the laws of the State of ~~Delaware~~ and the State of Oklahoma and is licensed to transact business within the State of Oklahoma; that the defendant, Gulf Oil Corporation, is duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is duly licensed to transact business within the State of Oklahoma; that the defendant, Magnolia Petroleum Company, is duly organized and existing under and by virtue of the laws of the State of Texas and is duly licensed to transact business within the State of Oklahoma; that the name and address of the resident agents of said defendant corporations are as follows:

Phillips Petroleum Company, Bruce McClelland, Jr., Hightower Building, Oklahoma City, Oklahoma.

Amerada Petroleum Corporation, George M. Green, 735 First National Bldg., Oklahoma City, Oklahoma.

Anderson-Prichard Oil Corporation, T. H. Marshall, 1000 Apeo Tower, Oklahoma City, Oklahoma.

Ray Stephens, Inc., H. G. Stephens, 2600 Apeo Tower, Oklahoma City, Oklahoma.

Stephens Petroleum Company, Waldo E. Stephens, 2600 Apeo Tower, Oklahoma City, Oklahoma.

Gulf Oil Corporation, Katherine Manton, 1517 N. W. 20th, Oklahoma City, Oklahoma.

Magnolia Petroleum Company, W. R. Wallace, 7th and Broadway, Oklahoma City, Oklahoma.

Cities Service Oil Company, B. A. Ames, First National Building, Oklahoma City, Oklahoma:

Foster Petroleum Corporation, Katherine Manton, 1517 N. W. 20th, Oklahoma City, Oklahoma.

Sunray Oil Corporation, Edward Howell, 2420 First National Bldg., Oklahoma City, Oklahoma.

That said defendant corporations above named comprise the purported operating committee of the so-called West Cement Medrano Unit as purportedly created and established by the Commission under and by virtue of its order No. 20289 entered September 5, 1947, and that said corporations so comprising said committee will be hereinafter referred to as "Committee".

Second: That "Sterbas," petitioners herein, are the owners as tenants in common, Paul Sterba owning an undivided $\frac{3}{4}$ ths interest and Paul Sterba, Jr., a minor, owning an undivided $\frac{1}{4}$ th interest, of the following described real estate in Caddo County, Oklahoma:

The Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-five (35), Township Six (6) North, Range Ten (10) West.

That heretofore and on or about February 12, 1936, the then owners of the above described real estate, Paul Sterba and his wife, Gertrude K. Sterba, and his sister, Helen Sterba Jackson, and her husband, Clifford Jackson, made, executed and delivered, as lessors, to Chris Pearson, as lessee, an oil and gas lease covering said real estate, said lease being recorded in Book 75, page 316, in the Office of the County Clerk of said County and State, which by reference thereto is made a part hereof; that among other terms and provisions of said oil and gas lease, the lessee therein or his assigns therein covenanted to deliver to the credit of the lessors, free of cost, in the pipe line to which the lessee may connect wells on said land, the equal one-eighth part of all oil produced and saved from said leased premises. Said lessee and his assigns further covenanted

to pay to lessors one-eighth of the gross proceeds of gas produced at the prevailing market rate for gas.

That thereafter, and on or about the 15th day of February, 1936, said Chris Pearson transferred all of his interest in and to said oil and gas lease to defendant, Gulf Oil Corporation, which assignment is recorded in Book 75 Misc., page 319, in the Office of the County Clerk in said County and State, which by reference thereto is made a part hereof.

Third: That on or about the 6th day of September, 1938, the Gulf Oil Corporation entered into written contract with "Palmer" under the terms of which Gulf Oil Corporation agreed to assign to "Palmer" all of its interest in and to said oil and gas lease to a depth of 6000 feet provided "Palmer" would within thirty (30) days commence drilling operations for a test well in the Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of said Southwest Quarter (SW $\frac{1}{4}$) of said Section Thirty-five (35), and with diligence and dispatch drill said well to a total depth of 6000 feet, unless oil, gas or either of them or igneous rock or other impenetrable substance was encountered at a lesser depth; that said contract is recorded in the Office of the County Clerk in said County and State in Book 83, page 379, and by reference made a part hereof.

Fourth: That "Palmer" duly performed all terms and conditions of said contract by drilling and completing an oil and gas test well as a commercial producer on or about October 13, 1938 at the location above designated, said well being known as the Palmer-Sterba No. 1 well and being completed in what is commonly known as the Niles Sand at a total depth of 3545 feet.

That on December 6, 1938 Gulf Oil Corporation assigned and set over unto "Palmer" the aforescribed oil and gas lease to a depth of 6000 feet, all as provided in said contract of assignment, said assignment being filed in the Office of the County Clerk and recorded in Book 84, page 214; Caddo County, Oklahoma, and by reference thereto is made a part hereof.

Fifth: That thereafter and on the 5th day of May, 1939,

"Palmer" drilled and completed a Palmer-Sterba Well No. 2 at a location in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter of the Southwest Quarter of said Section Thirty-five, which well is producing from the Rowe Sand at a total depth of 3401 feet; that thereafter and on the 31st day of October, 1940, "Palmer" drilled and completed as a producer of gas in commercial quantities Palmer-Sterba No. 3 well at a location in the Northwest Quarter of the Northwest Quarter of the Southwest Quarter of said Section Thirty-five, from what is commonly known as the Medrano Sand at a total depth of 5260 feet; that thereafter and on or about the 5th day of June, 1943, "Palmer" drilled and completed as a producer of oil in commercial quantities Palmer-Sterba Well No. 4, at a location in the Southeast Quarter of the Southeast Quarter of the Southwest Quarter of said Section Thirty-five, from what is commonly known as the Medrano Sand at a total depth of 5995 feet; that thereafter and on or about the 14th day of August, 1943, "Palmer" drilled and completed, as Palmer-Sterba No. 5, a well at a location in the Southeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section Thirty-five, which well was drilled to a depth of 6000 feet, sufficient to test what is commonly known as the Medrano Sand, but by reason of a fault there existing such sand was found absent, but that said well was completed as a commercial producer in what is commonly known as the Marchand Sand; that thereafter and on or about the 17th day of November, 1943, "Palmer" drilled and completed as a dry hole Palmer-Sterba No. 6 well at a location in the Northeast Quarter of the Southwest Quarter of said Southwest Quarter of Section Thirty-five which well, in cooperation with Gulf Oil Corporation, was drilled to a depth of 6425 feet, sufficient to test what is commonly known as the Medrano Sand, but by reason of a fault there existing such sand was found absent; that thereafter and on or about the 21st day of March, 1947, "Palmer" drilled and completed as a commercial producer of oil Palmer-Sterba No. 7 well at a location in the Northeast Quarter

of the Southwest Quarter of the Southwest Quarter of said Section Thirty-five, which well is producing from what is commonly known as the Medrano Sand at a total depth of 5992 feet; that the drilling and development operations of "Palmer" were performed in a good and workmanlike manner and under the rules and regulations of the "Commission" in compliance with the implied covenants of said oil and gas lease and at all times "Palmer" paid to "Sterbas" their $\frac{1}{8}$ th of the proceeds of oil or gas produced, as provided under the terms and provisions of said lease.

Sixth: That on or about the 19th day of April, 1945, the Legislature of the State of Oklahoma enacted a statute providing for the unitized management of common sources of supply of oil and gas, which law was designated as House Bill No. 339 of the 1945 Legislature of the State of Oklahoma and became effective as a law July 25, 1945, and is set forth in O. S. Supp. 1947, Title 52, Sec. 286.1 to 286.17, both inclusive; that the terms and provisions of said statute purported to establish a radical departure from the rules of property and property rights that had heretofore existed in the State of Oklahoma in respect to the drilling and development of common sources of supply of oil or gas; that said statute by its own terms provided: (Sec. 286.2)

"Provided this Act shall not apply to any field where the discovery well has been drilled (20) years prior to the effective date of this Act."

Seventh: That on or about October 27, 1946, the defendants, Phillips Petroleum Company, Amerada Petroleum Corporation, Anderson-Prichard Oil Corporation, Ray Stephens, Inc., Stephens Petroleum Company and Magnolia Petroleum Company, as petitioners, filed their petition with the Corporation Commission of the State of Oklahoma for an order creating the "West Cement Medrano Unit" having for its purpose the unitized management, operation and further development of the entire Medrano Sand of the West Cement Field of Caddo County,

Oklahoma, including the premises owned by "Sterbas" as above described and the leaseholds thereon held by "Palmer" and Gulf Oil Corporation; that Gulf Oil Corporation has completed no producing well upon the premises and that "Sterbas" relied upon "Palmer" as their lessee and operator of all the producing wells upon their premises to fully protect their interests in said proceedings before the "Commission".

Eighth: That the proceedings before the "Commission" to establish such West Cement Medrano Unit were designated as Cause C.D.1308 and that various hearings were had therein beginning on or about the 9th day of December, 1946, and terminating on or about July 29, 1947; that under the plan of unitization originally proposed by the petitioners therein there was allocated to "Sterbas'" property as their interest in the total unit the percentage of 7.683, which percentage was divided between the leaseholds thereon as follows:

Palmer (above 6000')	5.145
Gulf Oil Corporation (below 6000')	2.538

and that the proposed plan of unitization and the unit area designated thereby was agreed upon in writing by all of the members of the "Committee", defendants herein, including Gulf Oil Corporation.

Ninth: That "Palmer" as lessee of "Sterbas'" premises duly filed its answer and protest to the petition filed in said proceedings C.D.1308 before the "Commission" and claimed in the hearings before said "Commission" that said statute under which petitioners sought to establish said unit was unconstitutional, constituting a deprivation of property without due process of law, impairment of the obligation of contract, unlawful delegation of power and a taking of property without compensation—all in violation of the Constitution of the United States and the Constitution of the State of Oklahoma; that the proposed plan of unitization did not allocate to "Sterbas'" property and particularly to "Palmer's" leasehold thereon, a fair percent of the unit production; that the plan was otherwise inequitable and unjust; that the Medrano Sand

of the West Cement Field did not constitute a single common source of supply; that the plan made no provision for adjustment of equities or property rights as might be reflected by subsequent development; that the discovery well in the West Cement Field was drilled more than twenty (20) years prior to the effective date of the statute; and that the facts were otherwise insufficient to justify the establishment of unitized management and operation.

Tenth: That petitioners amended the proposed plan of unitization by allocating to "Sterbas'" premises a total unit percent of 7.67202, which was divided between the leaseholds thereon as follows:

Palmer (above 6000')	5.51614
Gulf Oil Corporation (below 6000')	2.15688;

that the percent above mentioned was allowed to Gulf Oil Corporation irrespective of the fact that no producing well was drilled on said "Sterbas'" premises to a depth greater than 6000 feet and that in the allocation of said percentage "Palmer" was given no consideration by the "Commission" on its contention of certain ownership and drainage rights below 6000 feet.

That on the 5th day of September, 1947, the "Commission" entered its order No. 20289 in Cause No. C.D.1308, establishing the West Cement Medrano Unit exactly in accordance with the amended plan of unitization proposed by said petitioners, a copy of said order being attached hereto, marked Exhibit "A", and by reference made a part hereof; that said order included within the West Cement Medrano Unit the property owned by "Sterbas" and various other properties all as shown by the hatched lines on the plat attached to Exhibit "A".

Eleventh: That said order No. 20289 entered by the "Commission" was illegal, invalid and void on its face because

First: The order shows on its face that the discovery well in the West Cement Field was drilled more than 20 years prior to the effective date of the statute and therefore the law could not be applied.

Second: The law and order on its face shows that it is unconstitutional under both the Constitution of the State of Oklahoma and the Constitution of the United States.

Twelfth: That the discovery oil and gas well in the West Cement Field of Caddo County, Oklahoma, was the Fortuna Company well drilled and completed at a location in the Southwest Quarter of Section Thirty-one, Township Six North, Range Nine West, on or about October 17, 1917; that despite such undisputed fact the "Commission" undertook to exercise arbitrary and excessive judicial power by applying the unitization statute above referred to to the West Cement Field of Caddo County, Oklahoma; that the "Commission" without legal authority sought to avoid the effect of the provision contained in Sec. 286.2 of said statute above referred to by making the following finding:

"That the West Cement Medrano Pool is a field within the meaning of that term as used in the second paragraph of Section 2 of H. B. 339 of the 1945 Oklahoma Legislature; that the term 'field' in ordinary usage has no fixed or definite meaning but is sometimes used to refer to the general area where a number of oil or gas formations are found and at other times used to refer to a particular common source of supply or pool; that as used by the Legislature aforesaid, the term was intended to relate to the particular common source of supply or pool sought to be unitized under the act and not to any general area which in a broader sense could be termed a field; that in effect said act relates to and deals only with single common sources of supply of oil and gas."

That the "Commission" failed to consider or comment upon the constitutional questions raised and presented to it with respect to the validity of the statute under which it ordered the establishment of the West Cement Medrano Unit.

That all of the evidence introduced in Cause No. C.D.1308 showed that the Medrano Sand bodies of the West Cement Field constituted two or more distinct common sources of

supply as a result of geological faults of sufficient magnitude and extent to completely separate the sand bodies of the said Medrano Sand lying on either side of such faults. That despite such facts the "Commission" in violation of the statute itself, which is applicable only to single common sources of supply, applied such statute and ordered a unitization of the several separate bodies of Medrano Sand of the West Cement Field.

Thirteenth: That "Palmer" duly appealed to the Supreme Court of the State of Oklahoma from "Commission's" order numbered 20289 and filed with the "Commission" an application for the fixing of supersedeas bond for the purpose of staying said order of the "Commission" pending final determination thereof by the Supreme Court of the State of Oklahoma; that the "Commission" on the 3rd day of October, 1947, fixed the amount of supersedeas bond in the sum of \$250,000.00, which was unreasonable, arbitrary and excessive and "Palmer" failed to make bond in said amount, but perfected said appeal on or about October 18, 1947, without bond, and the same is now pending before the Supreme Court of the State of Oklahoma as Case No. 33436; and that "Palmer" has duly filed in said appeal its brief and is awaiting the filing of briefs by the "Committee" or its members, and the final hearing thereof by the Court; that all matters presented in said appeal are by reference made a part hereof.

Fourteenth: That on December 1, 1947, the "Sterbas" and "Palmer" involuntarily relinquished to defendant Phillips Petroleum Company, as Unit Operator under the supervision of the "Committee" and under the authority and approval of the "Commission", possession, control and operation of the Medrano Sand in and under "Sterbas'" premises and "Palmer's" leasehold, all as above described; that at all times since December 1, 1947, said "Committee" and the "Commission" have withheld said property from "Sterbas" and "Palmer" and have exercised and have threatened to continue to exercise unreasonable, excessive and arbitrary judicial power in the operation and development of said property; that at all times

since December 1, 1947, the "Committee" and the "Commission" have operated and developed said property as several common sources of supply and threaten to continue to do so.

Fifteenth: That "Sterbas" and "Palmer" as the result of the operations of the "Committee" as authorized by the "Commission" and the threatened continued operations have suffered and will suffer irreparable and permanent damages and that "Sterbas" and "Palmer" will be faced with a multiplicity of suits of a prolonged and extensive nature if the "Committee" and the "Commission" are not restrained and prohibited from further operating their property.

Sixteenth: That during the period of December, 1947, January and February, 1948, the "Committee" with the authority and approval of the "Commission" produced from "Sterbas'" and "Palmer's" property the total of 51,817 barrels of oil, which amount constituted for said period 11.3% of the total oil produced by the "Committee" under the authority of the "Commission" from the entire unit, the total unit production being 453,245 barrels of oil; that under the terms of the oil and gas lease existing between "Sterbas" and "Palmer"—assuming a price of \$2.50 per barrel for oil—"Sterbas" would have been entitled to a royalty of approximately \$16,000.00 for said three months' period and "Palmer" would have been entitled to an amount in excess of \$100,000.00 on the oil and gas produced and sold; that under the percent allocated to "Sterbas'" property of the total unit production—assuming a price of \$2.50 per barrel for oil—"Sterbas" would be entitled to a royalty for said three months' period of approximately \$11,000.00 and "Palmer" would be entitled to a sum of approximately \$60,000.00; that the deficiency in the amount payable to "Sterbas" under the terms of the oil and gas lease in the approximate sum of \$5,000.00 has been or will be paid by the "Committee" with the authority and approval of the "Commission" to various of the "Committee" members and other parties within the unit and that "Sterbas" will be unable to re-

cover the same without prolonged and expensive litigation involving many parties and many suits; that the deficiency in the amount payable to "Palmer" under the terms of its oil and gas lease during said period of a sum in excess of \$40,000.00 has been or will be paid by the "Committee" with the authority and approval of the "Commission" to various of the "Committee" members and other parties within the unit and cannot be recovered by "Palmer" without prolonged and expensive litigation involving many parties and many suits; that petitioners are informed and believe that the "Committee" with the approval and authority of the "Commission" is continuing the same manner of operation of petitioners' property as those described during the period as aforesaid and will continue such operations indefinitely unless prohibited or restrained by this Court.

Seventeenth: That Petitioners have no speedy or adequate remedy except by an original action in this Court; the petitioners have no way of knowing the length of time required before the appeal in Case No. 33336 will be heard or whether the legal questions raised in said appeal can be properly determined in such appeal; that no actions or proceedings which petitioners could bring either in a State or Federal District Court or before the "Commission" could adequately provide a remedy to petitioners or prevent the continuing injury and damage which they are suffering each day; that the statute involved in this matter establishes a new property law in this state which has been applied by the "Commission" retroactively to the vested rights of petitioners; that the question of the validity of said statute is of great public interest, and, if valid, the interpretation and effect of such statute is likewise of great public interest; that this Court has broad powers in its original jurisdiction to issue writs of prohibition and to exercise superintending control over inferior tribunals.

Wherefore, petitioners pray that this Court take original jurisdiction and issue its alternative writ of prohibition directed to the ~~members~~ of the "Commission" and the

members of the "Committee" prohibiting them from enforcement of the "Commission's" order No. 20289 pending the final disposition hereof, and to set a day certain on which said writ shall be returnable on which the "Commission" and the "Committee" and the various members thereof shall be required to appear and show cause why such writ should not be made permanent, and for such other and further relief as to the Court may seem proper in the premises.

Respectfully submitted,

CLAUDE MONNET,

COLEMAN H. HAYES,

MART BROWN,

MARK H. ADAMS,

CHARLES E. JONES,

WILLIAM I. ROBINSON,

By

Address of attorneys: Claude Monnet, Coleman H. Hayes, Mart Brown, 1719 First National Bank Building, Oklahoma City, Oklahoma; Mark H. Adams, Charles E. Jones, William I. Robinson, 1008 Brown Building, Wichita, Kansas.

AFFIDAVIT

STATE OF

: County of , ss:

Tom Palmer of lawful age, being duly sworn upon oath, deposes and states:

That he is President of The Palmer Oil Corporation, one of the petitioners in the above and foregoing petition; that he has read said petition and understands the contents thereof and that the statements, allegations and averments therein set forth are true and correct.

TOM PALMER.

Subscribed and sworn to before me this day of
, 1948.

Notary Public.

My commission expires:

BEFORE THE CORPORATION COMMISSION OF
THE STATE OF OKLAHOMA

Cause CD No. 1308

Order No. 20289

IN THE MATTER OF THE PETITION FOR THE CREATION OF THE
WEST CEMENT MEDRANO UNIT HAVING FOR ITS PURPOSE
THE UNITIZED MANAGEMENT, OPERATION AND FURTHER
DEVELOPMENT OF THE WEST CEMENT MEDRANO COMMON
SOURCE OF SUPPLY OF OIL AND GAS IN CADDO COUNTY,
OKLAHOMA, THE DEFINING OF THE UNIT AREA THEREOF
AND THE PRESCRIBING OF THE PLAN OF UNITIZATION APPLI-
CABLE TO SUCH UNIT AND UNIT AREA

REPORT AND ORDER OF THE COMMISSION

The above styled and numbered cause is a proceeding brought by the lessees of a substantial majority of the acreage in the West Cement Medrano oil and gas pool or field located in Caddo County, Oklahoma, seeking to unitize the management, operation and further development of said field for the purpose of preventing the waste of oil and gas and of substantially increasing the ultimate recovery of oil therefrom, all as authorized and provided for in H. R. 333 of the 1945 Oklahoma Legislature. The bringing of this proceeding followed months of cooperative study of the field and of the benefits of unitization, engaged in by substantially all of the operating lessees in the pool and in which all were invited to participate. The original petition herein, attached to which was a recommended Plan of Unitization applicable to said field, was filed October 23, 1946.

Pursuant to order of the Commission, said petition was first set for hearing November 7, 1946, at 10:00 o'clock, A. M. in the Commission Courtroom in the State Capitol Office Building at Oklahoma City, Oklahoma, and notice thereof published once a week for two consecutive weeks in a newspaper of general circulation in Caddo County,

in which West Cement Medrano field is located, and for the same time in a newspaper of general circulation in Oklahoma County, Oklahoma.

At the time and place so fixed for said hearing, a large number of persons were present, not only lessees but also land owners, royalty owners and other persons having varying interests in the West Cement Medrano Field. A group of lessors and royalty owners, represented by their attorney, Reford Bond, Jr., advised the Commission that they had not had sufficient time within which to study the proposed Plan of Unitization and requested a continuance of the hearing. The granting of the continuance was agreed to by the petitioners who, through their attorneys, publicly announced that during the period of the continuance they stood ready and willing, upon request, to furnish any party in interest any factual data pertaining to the West Cement Medrano field and the proposed Plan of Unitization available to petitioners. At the same time Magnolia Petroleum Company, an operating lessee in the field, asked leave to sign the petition as one of the petitioners thereto. Whereupon, the Commission continued said hearing to December 9, 1946, at 10:00 o'clock A. M. at the same place, permitted the Magnolia Petroleum Company to sign the petition as one of the petitioners, directed that the petition be refiled and ordered that notice of the refiling of the petition and of the date to which said hearing was continued be published in the same manner and for the same time as was the first notice of hearing, all of which was done.

In advance of said original hearing date, as is its usual custom in oil and gas matters, the Commission mailed mimeographed copies of the petition, together with information as to the time of hearing, to all persons on its established mailing list, which includes all operating lessees within the West Cement Medrano field as well as a number of royalty and other interest owners.

The hearing of said cause was commenced at the time and place so fixed, namely, December 9, 1946, at 10:00 o'clock A. M., in the Commission Courtroom in the Capi-

tol Office Building in Oklahoma City, Oklahoma, and continued at the same place throughout all of the following days, to wit: December 9 and 23, 1946; January 6 and 7; February 25, 26, 27 and 28; May 13, 14, 15, 16, 20, 21, 22 and 23; July 15, 16, 17, 18, 22, 23, 24 and 25; all in 1947, except for said first mentioned dates in 1946. The continuance of said hearing from time to time was by proper orders of continuance. At said hearing the petitioners and subscribers to the proposed Plan of Unitization were represented by the following named attorneys: W. H. Brown, Russell G. Lowe, Booth Kellough, W. R. Wallace and R. M. Williams. The protestant, the Palmer Oil Corporation appeared by its attorneys, Mark H. Adams and Charles Jones, of Wichita, Kansas. Protestants Tom Potter, Clyde Kahle, Maud Kahle, Bob White Oil and Gas Company and a group of approximately 65 lessors and royalty owners appeared by their attorney, Reford Bond, Jr. The protestants B. E. Johnson, Virginia McIntyre and M. L. McIntyre appeared by their attorney, Jack Page. A number of royalty and other interest owners wrote letters to the Commission urging the granting of the petition, all of which appear in the record. Other royalty owners and various parties in interest were present at the hearing from time to time but took no part.

At the hearing everyone who desired to do so, regardless of the interest of such person, was given full opportunity to offer any and all competent evidence that any such person chose to offer, either for or against the recommended Plan of Unitization or by way of amendment thereto, and to otherwise be heard in regard thereto. The evidence so introduced consisted of extensive geological, engineering and other proof concerning the history, discovery, development, operation and present condition of the West Cement Medrano field and the probable results obtainable both under present competitive methods of operation and through the unitization thereof; proof both pro and con as to the fairness, reasonableness and equitableness of the recommended Plan of Unitization; and

proof by protestants with respect to certain amendments which they claim should be made in said Plan.

In addition to the knowledge gained from the evidence introduced at said hearing, the Commission has had, over a period of time, a general knowledge of the West Cement Medrano field and of conditions existing therein gained through the exercise by it of its jurisdiction over such field under the Conservation Laws of the State of Oklahoma, dating from the discovery thereof. As a result of the evidence, statements and arguments introduced and made in the hearing here under consideration, and by reason of its general knowledge of said West Cement Medrano field, as aforesaid, the Commission is of the opinion that it has sufficient knowledge and information upon which to base a proper order in this cause.

In addition to the proceedings and notices aforesaid, further mention is here made of the fact that during the course of said hearing, The Palmer Oil Corporation drilled and completed an additional well on a lease owned by it in the aforesaid field, necessitating a relatively slight change in the percentage of interests of the several separately owned tracts in the field shown in "Exhibit B" attached to the recommended Plan of Unitization, and also necessitating the inclusion of such additional well in "Exhibit D" attached to said Plan of Unitization. Also as a result of the time consumed by the hearing, it was considered desirable by the petitioners and subscribers to the recommended Plan of Unitization to strike from Section XXVII of said Plan the time limitation therein contained. To accomplish the aforesaid objectives, the petitioners during the course of the hearing asked and without objection were granted leave to amend the petition accordingly. In order to permit persons not present at the hearing an additional opportunity to be heard with respect to said amendment, the Commission set the petition as amended for further hearing on July 29, 1947, at 10:00 o'clock A. M., in the Commission Courtroom in the State Capitol Office Building at Oklahoma City, Oklahoma, and caused notice of the amendment to said petition and of

the hearing thereon to be published, ten (10) days prior to said hearing date, in a newspaper of general circulation in Oklahoma County, Oklahoma. At the time and place so named, the further hearing was had in said cause upon the petition as amended, no one appearing, however, in opposition thereto.

Now, on this 5th day of September, 1947, the Commission having previously taken said cause under advisement and having considered the matter in conference and each of the Commissioners being well and fully advised, the Commission makes the following findings of fact, conclusions of law, and enters the following order authorizing and approving the creation of the West Cement Medrano Unit, defining of the Unit area thereof and prescribing of the Plan of Unitization applicable to such Unit and Unit Area.

Findings of Fact and Conclusions of Law

The Commission finds:

1. That notice of the filing of the original petition, the resiling thereof after being signed by the Magnolia Petroleum Company, the filing of the amendment thereto and the time, place and purpose of the hearings on the petition, both as originally filed and as amended, was given in all respects as by law required, and that the Commission has jurisdiction of the subject matter of said petition and amended petition and of all persons interested therein, and has jurisdiction to make and promulgate the hereinafter prescribed order.
2. That the lands (hereinafter designated and referred to as the "Unit Area") located in Caddo County, Oklahoma and outlined by the hatched line on the map marked "Exhibit A" and attached to the Plan of Unitization attached to and made a part of this order, are underlaid with an oil and gas-bearing formation known as the Medrano sandstone found at a depth ranging from approximately 4500 feet along the North and Northeast side of the Unit Area and an approximate depth of 6241 feet along the South and Southwest side of the Unit Area; that a

gas cap exists along the high part of the producing formation from which the primary production is gas, whereas, the primary production from wells drilled lower on the structure is oil; that the average sand or formation thickness in the gas cap area or zone is approximately 65 feet; that the average sand or formation thickness in the oil area or zone is approximately 95 feet; that the said Medrano sandstone underlying said above described lands as aforesaid constitutes a single common source of supply of oil and gas, all parts of which are permeably connected, so as to permit the migration of oil or gas or both from one portion of said common source of supply to another whenever and whenever pressure differentials are created as a result of the production or operations for the production of oil or gas from said producing formation; that although faults are known to exist in parts of said common source of supply said faults do not prevent substantial migration of oil and gas and of pressures from one part of said common source of supply to another; that said common source of supply of oil and gas has heretofore been designated by the Commission and is generally known as the West Cement Medrano pool.

3. That said common source of supply of oil and gas was first discovered in October, 1936 by the drilling and completion of the Magnolia Petroleum Company's Medrano No. 6 gas well in the SE/4 of the NE/4 of the SW/4 of Section 36, Township 6 North, Range 10 West, Caddo County, Oklahoma; that the presence of oil in said common source of supply of oil and gas was first discovered in March, 1943 by the drilling and completion of the Stephens Petroleum Company's Pierson No. 1 oil well in the SE/4 of the SW/4 of the SE/4 of Section 35, Township 6 North, Range 9 West, Caddo County, Oklahoma; that at the present time there are 37 oil wells and 19 gas wells producing from said common source of supply of oil and gas.

4. That the outer boundaries of said common source of supply of oil and gas underlying and by this Order included within the aforesaid Unit Area have been reason-

ably defined by actual drilling operations, both by the drilling of wells within and the drilling of wells outside said Unit Area; that said Unit Area consists of approximately 3700 acres of land.

5. That the lands embraced within the aforesaid Unit Area are divided into a large number of individual tracts of varying size and shape, and owned in severalty by a large number of different individuals, firms and corporations owning varying interests therein, including oil and gas leasehold interests, royalty interests and various and sundry other rights and interests; that the several oil and gas leases covering said lands are owned by not less than 25 different lessees; that the royalty interests under said land are divided among and owned by several hundred royalty owners; that the petitioners in this cause are lessees of record of 73.32% of the area of the common source of supply sought to be unitized; that the subscribers to the recommended Plan of Unitization and other lessees favoring its adoption are lessees of record of approximately 94% of the area of said common source of supply; that the lessees appearing at the hearing and protesting the granting of the petition herein are lessees of approximately 4% of the proposed Unit Area; that the lessees of the remaining percentage of the Unit Area have not appeared for or against the granting of the petition herein.

6. That without the unitization of said West Central Medrano common source of supply of oil and gas the only method whereby said pool can be feasibly and effectively operated and produced for the recovery of oil and gas therefrom is by and under individual competitive pressure depletion methods of operation, the methods now being used in the pool, that is to say, by treating each separately owned tract or lease as a separate unit for operating and production purposes and depending on the natural energy in the producing formation to move what oil and gas can be moved thereby out of the formation to the well bore where it can be produced; that the principal natural energy mechanism in said pool is gas in solution with the oil coupled with a gas cap expansion; that under present

competitive methods of operation, treating each tract or lease as a separate operating unit, there has been and still continues to be a disproportionate, inequitable and wasteful utilization and dissipation of the gas energy in the pool by certain tracts to the detriment and disadvantage of other tracts and to the injury of the pool as a whole; that by and under the best known competitive pressure depletion methods of operation not more than 25% or approximately 24 million barrels of the 97 million barrels of oil originally in place in the reservoir can be economically recovered, leaving the remaining 75%, or approximately 73 million barrels of oil in the ground unrecovered and unrecoverable except through and by means of unitization of the pool and the adoption of unitized methods of operation therein; that to permit the owners of gas wells and high gas-oil ratio wells to continue to produce such wells will result in robbing the oil wells of gas energy required to produce the oil; that to shut in the gas wells and the high gas-oil ratio wells without permitting the owners thereof to share in the oil and gas production from the oil wells, would deprive the owners of the gas wells of their fair share of the production from the pool; that the value of the recoverable oil exceeds many times the market value of the gas; that the return to the reservoir of the gas produced from the oil to supplement the remaining natural gas energy and retard the decline in reservoir pressure and perhaps the injection at some later date of water low on structure is desirable and necessary to obtain the greatest ultimate recovery of oil from the pool, but which cannot be done in the absence of unitization because of the migratory nature of the injected gas or water and the effect that the injection thereof into the reservoir would have upon properties in the pool other than the property on which the gas or water is injected and upon the pool as a whole.

7. That by and through the unitization of the proposed Unit Area and the Unitized management and operation and further development thereof as a unit, all as set out and provided for in the Plan of Unitization hereto attached,

full use can be made of the gas energy in the reservoir to the mutual advantage of all the owners of the said common source of supply of oil and gas, that waste of large volumes of oil and gas can be prevented, gas can and will be returned to the reservoir to supplement the natural reservoir energy, water encroachment, either natural or artificial, on the lower side of the pool can be properly controlled and utilized, substantially more oil, amounting to many millions of barrels, can be recovered from the common source of supply than can otherwise be recovered, a more equitable distribution of the recoverable oil and gas can be had as between the several owners of the pool and the correlative rights of the several owners can be more fully protected.

8. The unitization and unitized management and operation and further development of said common source of supply as a unit is reasonably necessary to effectively carry on the unitized methods of operation described in the proposed Plan of Unitization.

9. That any one or all of the unitized methods of operation described in the attached Plan of Unitization as applied to the common source of supply underlying and included within the Unit Area are feasible, will prevent waste, and will, with reasonable probability, result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; that the estimated additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered; that such unitization and the adoption of any one or more of such unitized methods of operation is for the common good and will result in the general advantage to the owners of the oil and gas rights in and to the common source of supply thereby affected.

10. That neither said West Cement Medrano common source of supply of oil and gas nor any part or parts thereof were being operated by or under pressure maintenance, repressuring or secondary recovery methods of operation as of the effective date of H. B. 339 of the 1945 Oklahoma Legislature.

11. That the Plan of Unitization attached to this order and which is made a part hereof, is one suited to the needs and requirements of the West Cement Medrano Unit, the creation of which is hereby authorized and approved, taking into account all the facts and conditions found by the Commission to exist in respect thereto; that said Plan of Unitization is fair, reasonable and equitable and contains all the terms, provisions, conditions and requirements reasonably necessary and proper to protect, safeguard and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalty interests, oil and gas payments, carried interests, mortgagees, lien claimants, and others, as well as the lessees and such as will effectuate and accomplish the purposes of H. B. 339 of the 1945 Oklahoma Legislature; that said Plan of Unitization provides for the efficient unitized management and control of the further development and operation of the Unit Area for the recovery of oil and gas from the common source of supply affected; that the division of interests set forth in "Exhibit B" attached to said Plan of Unitization pursuant to which the unit production is to be apportioned and allocated among and to the several separately owned tracts within the Unit Area is fair and equitable and is such as will reasonably permit persons otherwise entitled to share in, or benefit by the production from such separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production, or other benefits thereof; that the division of interest assigned to the several separately owned tracts in the Unit Area as set out in said "Exhibit B" to said Plan of Unitization is fair and reasonably representative of the value of said several tracts for oil and gas purposes and the contributing value thereof to the unit in relation to like values of other tracts in the unit; that the basis used to arrive at said division of interest takes into account the acreage of the several separately owned tracts, the quantity of oil and gas recoverable therefrom the location thereof on structure, the probable productivity of oil and gas from

such tracts in the absence of unitization, the burden of operation to which such tracts will or are likely to be subjected, together with all other pertinent engineering, geological and operating factors as are reasonably susceptible of determination; that the manner in which and the basis, terms and conditions on which the cost and expense of the further development and operation of the Unit Area shall be financed and apportioned among and assessed against the tracts and interests chargeable therewith are fair, reasonable and equitable; that the provisions of the said Plan with respect to taking over and using the wells, equipment and other properties of the several lessees within the Unit Area, including the method of arriving at the compensation therefor and otherwise proportionately equalizing and adjusting the investment of the several lessees in the project as of the effective date of the unit operations are fair, reasonable and equitable; that the provisions of said Plan with respect to the creation of an operating committee and the powers and duties of such committee are fair, reasonable and equitable.

12. That the Plan of Unitization hereto attached in all respects conforms to and complies with the requirements of H. B. 339 of the 1945 Oklahoma Legislature.

13. That the West Cement Medrano pool is a field within the meaning of that term as used in the second paragraph of Section 2 of H. B. 339 of the 1945 Oklahoma Legislature; that the term "field" in ordinary usage has no fixed or definite meaning but is sometimes used to refer to the general area where a number of oil or gas producing formations are found and at other times used to refer to a particular common source of supply or pool; that as used by the Legislature aforesaid, the term was intended to relate to the particular common source of supply or pool sought to be unitized under the Act and not to any general area which in a broader sense could be termed a field; that in effect said Act throughout relates

to and deals only with single common sources of supply of oil and gas.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That the petition filed herein be and the same is hereby granted.
2. That the creation of the West Cement Medrano Unit as prayed in said petition be and the same is hereby authorized and approved.
3. That the Unit Area of said unit shall extend to and include all of the West Cement Medrano common source of supply of oil and gas outlined by the hatched lines on the map marked "Exhibit A" attached to the Plan of Unitization attached to this order.
4. That the Plan of Unitization hereto attached and which by reference is made a part of this order is hereby approved and shall constitute the Plan of Unitization of and for said West Cement Medrano Unit and the Unit Area of said Unit, all to the same extent and with the same force and effect as if copied herein in its entirety.
5. Nothing herein contained shall be construed as a waiver by the Commission of any of its powers or authority over the West Cement Medrano Unit or the persons comprising said unit, or the development and operation of the Unit Area thereof under the general oil and gas conservation laws of the State of Oklahoma, it being expressly recited that the Commission has and retains continuing jurisdiction over the operations carried on by the unit to the same extent that it would have jurisdiction over any other lessee or person producing oil and gas from the West Cement Medrano pool or field in the absence of unitization.
6. The Unit shall from time to time make such reports to the Commission concerning the operation by it of the Unit Area as may be requested by the Commission.

Done and Performed by the Corporation Commission
at its office in the Capitol Office Building, Oklahoma City,
Oklahoma, this 5th day of September, 1947.

CORPORATION COMMISSION OF OKLAHOMA,

(Signed) REFORD BOND, *Chairman.*

(Signed) RAY O. WEEMS, *Vice Chairman.*

(Signed) RAY C. JONES, *Commissioner.*

Attest:

(Signed) TOM McMURRAY, *Secretary.*

[SEAL]

(Here follows Phtolithograph, side folio 189).

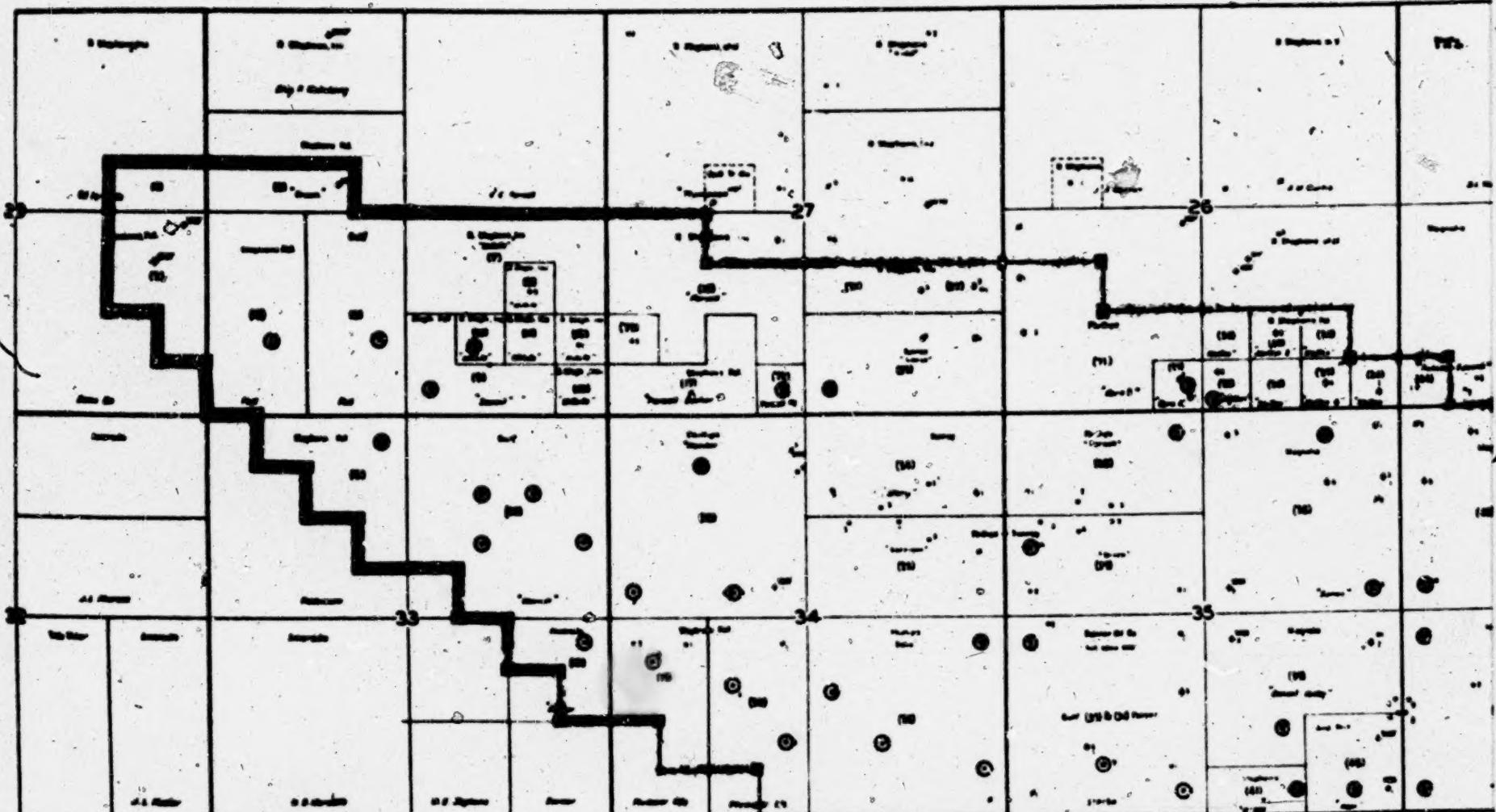
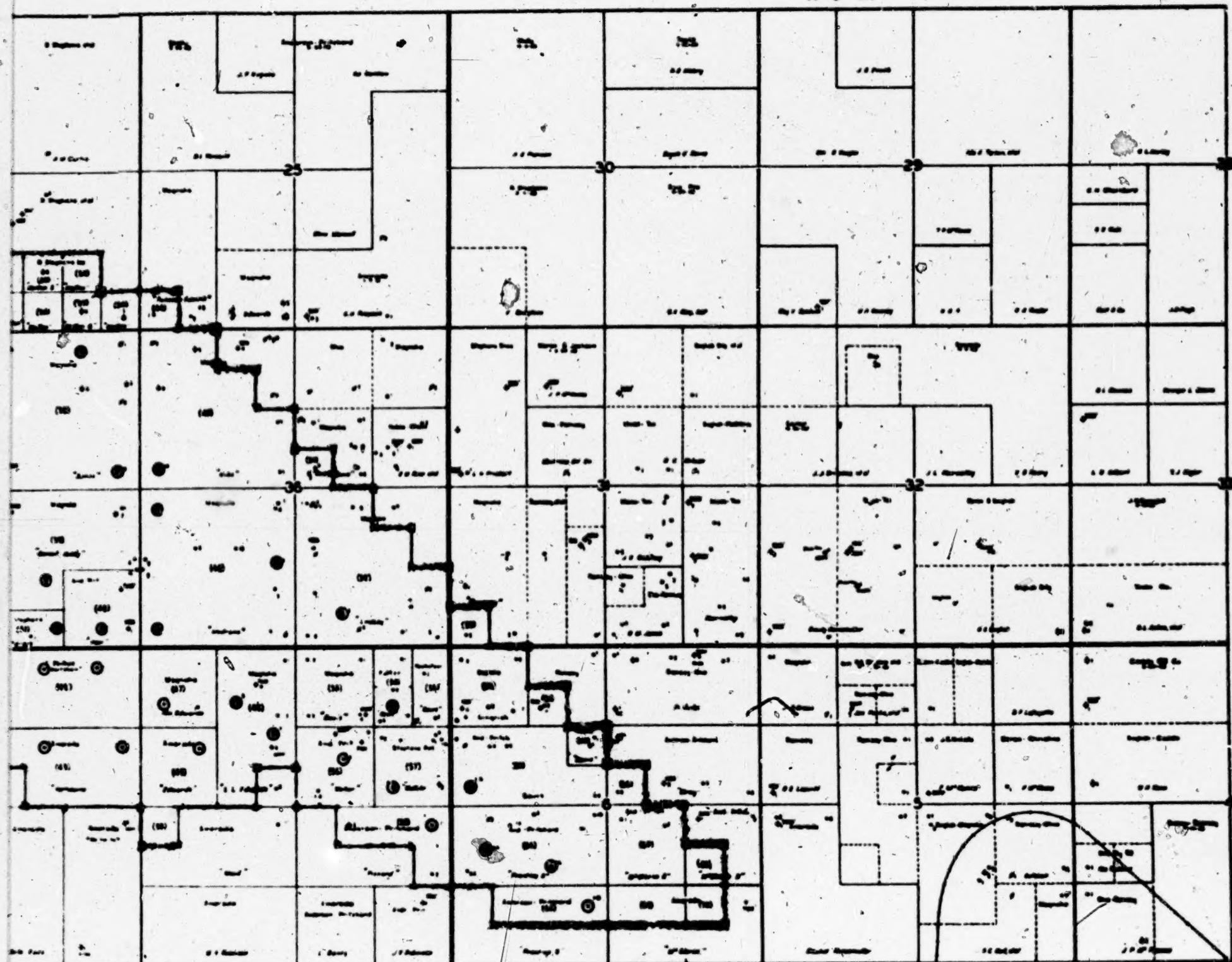


EXHIBIT A
MAP OF
WEST CEMENT MEDRANO UNIT

LEGEND

OUTLINE OF UNIT	—
MEDRANO SO. OIL WELL	○
MEDRANO SO. GAS WELL	●
OTHER OIL WELLS	·
OTHER GAS WELLS	·
TRACT NO. THIS	()

R-9-W.



IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

No. —

PAUL STERBA and PAUL STERBA, JR., a minor, by and through his father and next friend, PAUL STERBA, and THE PALMER OIL CORPORATION, a corporation,

Petitioners,

vs.

CORPORATION COMMISSION OF OKLAHOMA, consisting of REFORD BOND, RAY O. WEEMS and RAY C. JONES; PHILLIPS PETROLEUM COMPANY, a corporation; AMERADA PETROLEUM CORPORATION, a corporation; ANDERSON-PRICHARD OIL CORPORATION, a corporation; RAY STEPHENS, INC., a corporation; STEPHENS PETROLEUM COMPANY, a corporation; GULF OIL CORPORATION, a corporation; MAGNOLIA PETROLEUM COMPANY, a corporation; CITIES SERVICE OIL COMPANY, a corporation; FOSTER PETROLEUM CORPORATION, a corporation; and SUNRAY OIL CORPORATION, a corporation,

Defendants.

NOTICE

To Each of the Above Named Defendants:

Take Notice that on the above and foregoing application, petition, and exhibits attached thereto, Paul Sterba and Paul Sterba, Jr., a minor, by and through his father and next friend, Paul Sterba, and The Palmer Oil Corporation, as petitioners, will move the Supreme Court in the City of Oklahoma City, Oklahoma, on the — day of _____, 1948, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an Order assuming original jurisdiction and directing that an al-

ternative writ of prohibition issue out of said Court directed to said defendants, commanding them to desist and refrain from any further proceedings in the enforcement of Order No. 20289, made by the Corporation Commission of the State of Oklahoma on September 5, 1947, and for such other relief as may be just and proper.

Claude Monnet,
 COLEMAN H. HAYES,
 MART BROWN,
 MARK H. ADAMS,
 CHARLES E. JONES,
 WILLIAM I. ROBINSON,
 By

Attorneys for Petitioners.

Address of Attorneys: Claude Monnet, Coleman H. Hayes, Mart Brown, 1719 First National Bank Building, Oklahoma City, Oklahoma. Mark H. Adams, Charles E. Jones, William I. Robinson, 1008 Brown Building, Wichita, Kansas.

Proof of Service

STATE OF KANSAS,

County of Sedgwick, ss:

_____, after being duly sworn upon oath deposes and states:

That he served a copy of the foregoing notice, together with a copy of the application, petition and brief in support thereof, upon each of the defendants, as follows:

1. By delivering a true and correct copy to _____, as attorney for the Corporation Commission of the State of Oklahoma, on the _____ day of _____, 1948.

2. By delivering a true and correct copy on the following named persons, as resident agents for the following named defendants, on the _____ day of _____, 1948:

(a) Bruce McClelland, Jr., Hightower Building, Oklahoma City, Oklahoma, for Phillips Petroleum Company.

(b) George M. Green, 735 First National Bldg., Oklahoma City, Oklahoma, for Amerada Petroleum Corporation.

(c) T. H. Marshall, 1000 Apeco Tower, Oklahoma City, Oklahoma, for Anderson-Prichard Oil Corporation.

(d) H. G. Stephens, 2600 Apeco Tower, Oklahoma City, Oklahoma, for Ray Stephens, Inc.

(e) Waldo E. Stephens, 2600 Apeco Tower, Oklahoma City, Oklahoma, for Stephens Petroleum Company.

(f) Katherine Manton, 1517 N. W. 20th, Oklahoma City, Oklahoma, for Gulf Oil Corporation and for Foster Petroleum Corporation.

(g) W. R. Wallace, 7th and Broadway, Oklahoma City, Oklahoma, for Magnolia Petroleum Company.

(h) B. A. Ames, First National Bldg., Oklahoma City, Oklahoma, for Cities Service Oil Company.

(i) Edward Howell, 2420 First National Bldg., Oklahoma City, Oklahoma, for Sunray Oil Corporation.

In Witness Whereof, I have hereunto set my hand this
— day of —, 1948.

Subscribed and sworn to before me this — day of
—, 1948.

Notary Public.

My commission expires:

APPENDIX "I"**GENERAL CONSERVATION STATUTES OF THE STATE OF OKLAHOMA**

O. S. 1941, Title 52, Secs. 81 to 279, incl.

O. S. 1949 supp., Title 52, Secs. 84 to 127.2

OKLAHOMA STATUTES 1941

Title 52, Sections 81 to 279, Inclusive

General Provisions

"Par. 81. Oklahoma Oil and Gas Conservation Act—Change of title of officers and fund.—From and after the effective date of this Act, Chapter 131, Oklahoma Session Laws 1933,¹ shall be designated and shall be the 'Oklahoma Oil and Gas Conservation Act,' and in all places therein where the words 'proration umpire' are used the same shall be construed to mean 'conservation officer,' where the words 'assistant proration umpire' are used the same shall be construed to mean 'assistant conservation officer', where the words 'proration attorney' are used the same shall be construed to mean 'conservation attorney', where the words 'deputy proration umpire' are used the same shall be construed to mean 'deputy conservation officers' and where the words 'proration fund' are used the same shall be construed to mean "conservation fund"; and said officers and said fund shall hereinafter be designated, and shall be, as above set forth. Laws 1935, p. 239, Par. 1.

"Par. 82. Consolidation of offices and positions—Certain positions abolished—Supervision and control—Additional duties of officers.—The duties of the office and the position of the Chief Oil and Gas Conservation Agent, created and now existing under and by virtue of law; is hereby transferred to and consolidated with the office and position of the Conservation Officer, as herein named in Section 1,^{1a} and all of the duties exercised by said Chief Oil

¹ Sections 84-135 of this title.

^{1a} Section 81 of this title.

and Gas Conservation Agent will, after the passage of this Act, be exercised by the Conservation Officer as herein named in Section 1.

"The positions, respectively, of Chief Oil and Gas Conservation Agent, and six (6) of the eleven Conservation Officers, created and now existing by virtue of law under the 'Bureau for the Conservation of Oil and Gas,' are hereby abolished, and, from and after the effective date of this Act, the other officers and employees created and now existing by virtue of law under the 'Bureau for the Conservation of Oil and Gas' shall be under the supervision and control of the Conservation Officer as herein named in Section 1, and in addition to their present duties shall hereafter perform all duties imposed by said Chapter 131, Session Laws, 1933,^{1b} and the statutory salaries thereof shall be paid from the said Conservation Fund; and the duties now imposed on the officers and positions by said Chapter 131, Session Laws, 1933, shall also include the enforcement of all the laws, and the rules and regulations of the Corporation Commission pertaining to oil and gas. Laws 1935, p. 239, Par. 2.

"Par. 83. Well log division—Supervision and control—Disposition of fees—Stenographer or clerk.—The Well Log Division of the Corporation Commission as now existing shall, from and after the effective date of this Act, be under the supervision and control of said Conservation Officer, and all fees collected by said division shall be paid into the Conservation Fund. One or more of the stenographers or clerks mentioned in Section 4 hereof^{1c} shall be assigned to perform the duties of the Well Log Division. Laws 1935, p. 239, Par. 3; Laws 1941, p. 217, par. 6.

"Par. 84. Definitions.—For the purposes of this Act:

"(a) The term 'Commission' shall mean the Corporation Commission.

"(b) The word 'Person' shall include any individual, copartnership, corporation, common law or statutory trust, or association of whatever character.

^{1b} Section 84-135 of this title.

^{1c} Section 127 of this title.

“(e) The term ‘Common Source of Supply’ shall comprise and include that area which is underlaid, or which from geological or other scientific data, or from drilling operations or other evidence appears to be underlaid by a common accumulation of oil or gas, provided that if any such area is underlaid, or appears from geological or other scientific data, or from drilling operations, or other evidence to be underlaid by more than one common accumulation of oil or gas separated from each other by strata of earth and not connected with each other, then such area shall as to each said common accumulation of oil or gas be deemed a separate common source of supply.

“(d) The word ‘Oil’ shall mean crude oil or petroleum.

“(e) The term ‘Producer of Oil’ shall mean any person who alone or in association with another person or persons shall have the right to drill into and produce oil from or who has any interest in oil produced from any common source of supply of oil in this State.

“(f) The term ‘Operator’ shall mean any producer of oil who has drilled a well or wells into a common source of supply and is engaged in operating such well or wells for the purpose of producing oil or gas therefrom.

“(g) The term ‘Taker’ shall include any person, who, acting alone, or jointly with any other person or persons, shall directly or indirectly purchase or transport by any means whatsoever or otherwise remove oil or gas from any common source of supply in this State. Laws 1933, ch. 131, p. 278; Par. 1.

“Validity.—Grison Oil Corporation v. Corporation Commission, 186 Okl. 548, 99 P. 2d 134; Patterson 1. Stanolind Oil & Gas Co., 59 S. Ct. 259, 305 U. S. 376, 83 L. Ed. 231, dismissing appeal 77 P. 2d 83, 182 Okl. 155; Indian Territory Illuminating Oil Co. v. Larkins, 168 Okl. 69, 31 P. 2d 608; Sterling Refining Co. v. Walker, 165 Okl. 45, 25 P. 2d 312; Rich v. Doneghey, 71 Okla. 204, 177 P. 86, 3 A. L. R. 352.

“Construction and application.—Gilmer Oil Co. v. Corporation Commission of Oklahoma, 177 Okl. 505, 61 P. 2d 22; State ex rel. Oklahoma Tax Commission v. Barnsdall Refineries, 56 S. Ct. 340, 296 U. S. 521, 80 L. Ed. 366, affirm-

ing Barnsdall Refineries v. Oklahoma Tax Commission, 171 Okla. 145, 41 P. 2d 918, certiorari granted State of Oklahoma ex rel. Oklahoma Tax Commission v. Barnsdall Refineries, 56 S. Ct. 97, 296 U. S. 556, 80 L. Ed. 392."

Par. 85. Waste of oil—Definition and prohibition—Rules, regulations, and orders.—The term 'waste' as used in this Act,¹ as applied to the production of oil, in addition to its ordinary meaning and in addition to the meaning given thereto by any other provision of this Act, shall include economic waste, under-ground waste, including water encroachment in the oil and/or gas bearing strata. The use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery of oil, surface waste, and waste incident to the production of oil in excess of transportation or marketing facilities, or reasonable market demands. The production of oil or gas in the State of Oklahoma in such manner and under such conditions as to constitute waste as in this Act defined is hereby prohibited and the Commission shall have authority and is charged with the duty to make rules, regulations, and orders for the prevention of such waste, and for the protection of all fresh water strata and oil and/or gas bearing strata encountered in any well drilled for oil or gas. Laws 1933, ch. 131, p. 279, Par. 2; Laws 1935, p. 232, Par. 1.

Validity. Sterling Refining Co. v. Walker, 165 Okl. 45, 25 P. 2d 312.

Administration of law. British American Oil Producing Co. v. Corporation Commission of Oklahoma, 180 Okl. 468, 69 P. 2d 669.

Jurisdiction and power of Commission. Grison Oil Corporation v. Corporation Commission, 186 Okl. 548, 99 P. 2d 134; Croxton v. State, 186 Okl. 249, 97 P. 2d 11; Gilmer Oil Co. v. Corporation Commission, 183 Okl. 95, 80 P. 312; Gilmer Oil Co. v. Corporation Commission of Oklahoma, 177 Okl. 505, 61 P. 2d 22.

Par 86. Waste of gas—What included—Power of com-

¹ Sections 84-135 of this title.

mission to limit production.—The term "waste" as applied to gas contained in or produced from a common source of supply of oil shall, in addition to its ordinary meaning, include the unreasonable production and/or the inefficient or wasteful utilization of gas in the operation of oil wells drilled therein. In Such Quantities Or In Such Manner As Unreasonably To Reduce Reservoir Pressures, Or Unreasonably To Diminish The Quantity Of Oil That Ultimately Might Be Recovered From The Common Source of Supply, the escape, directly or indirectly, of gas from oil wells drilled therein into the open air in excess of the amount necessary in the efficient drilling, completion or operation thereof; the escape, blowing or releasing, directly or indirectly, into the open air of gas produced from wells productive of gas, only, or of gas and gasoline, only, drilled into any such common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of the gas energy contained in such common source of supply. In order to prevent the waste or to reduce the dissipation of the gas energy contained in any such common source of supply, the Commission, in addition to its other powers in respect thereof, shall have authority to limit the production of gas from wells producing gas only or gas and gasoline only, to a percentage of the daily open flow capacity of such wells that is less than the percentage of oil production allowed to oil wells drilled therein. Laws 1933, ch. 131, p. 279, Par. 3; Laws 1935, p. 232, Par. 2.

"Par. 87. Common Source of supply of oil—Restriction to proportion of nonwasteful production—Powers of Commission.—Whenever the full production of any common source of supply of oil in this State can only be obtained under conditions constituting waste, then any person having the right to drill into and produce oil from any such common source of supply may, except as otherwise authorized and/or in this Act,¹ provided, take therefrom only such proportion of all oil that may be produced therefrom without waste as the production of the well or wells of

¹ Sections 84-135 of this title.

any such person bears to the total production of such common source of supply. The Commission is authorized to regulate the taking of oil from any or all such common sources of supply within the State of Oklahoma so as to prevent the inequitable or unfair taking from any common source of supply, and to prevent unreasonable discrimination in favor of any such common source of supply against another."

"Well spacing and drilling units. (a) To prevent, and to assist in preventing, the various types of waste prohibited in said Chapter 131, as amended by this Act,¹ or any of said wastes said Corporation Commission by orders, rules and regulations made in conformity with the procedural requirements of Chapter 131, Session Laws of Oklahoma, 1933,² shall have the power to establish well-spacing and drilling units of uniform and specified size and shape for any common source of supply discovered in this State after this Act shall become effective, or for any common source of supply producing in said State when this Act shall become effective where the well-spacing and drilling unit established for said producing common source of supply shall not unreasonably prejudice, affect, or impair the correlative rights and obligations of the producers of oil and royalty owners interested in said common source of supply. The drilling unit shall not exceed ten (10) acres in size, unless eighty per cent (80%) or more of the lessees of record as of the date of bringing in the first well and owning at least eighty per cent (80%) of all the acreage embraced within the probable producing area of the common source of supply agree to a larger unit, but in no event shall such a drilling unit exceed forty (40) acres. Provided, that sub-section (a) shall not apply to oil fields producing from a common source of supply and already developed or substantially drilled and developed at the time of the passage of this Act, unless unanimously agreed to by all operators therein.

"Determination of size and shape of drilling units—Location of Wells. (b) in establishing a well-spacing or

¹ Sections 85-87 of this title.

² Sections 84-135 of this title.

drilling unit for a common source of supply hereunder, the acreage to be embraced within the unit and the shape thereof shall be determined by the Commission from the evidence introduced at the hearing, and the following facts, among other things, shall be material; (1) The lands embraced in the common source of supply as then defined; (2) The plan of well-spacing then being employed in said source of supply; (3) The depth of such producing wells as may already have been completed therein; (4) The thickness, porosity and permeability of the producing sand in said source of supply; (5) The nature and character of the reservoir energy found therein; (6) The formations encountered in any wells then drilling in said source of supply; (7) Cores taken from said source of supply; (8) The history and producing characteristics of wells in other sources of supply producing from the same or similar formations; and (9) Any other available geological or scientific data pertaining to said source of supply which may be of probative value to said Commission in determining the proper spacing and well drilling unit therefor, with due and reasonable allowance for the correlative rights and obligations of the producers of oil and royalty owners interested therein; Provided, That In Making An Order Under This Sub-Section A Plat Showing The Surface Area Included Therein And The Size, Form, And Shape Of The Spacing Or Drilling Unit Established Shall Be Attached Thereto And Subject To The Other Provisions Of This Act, said order shall direct that where a unit is held or owned as an entirety the well permitted that unit shall be located as near the center thereof as may be. Provided, however, if such a unit is located on the edge of a common source of supply and adjacent to a producing unit, then upon application, notice and hearing before the Commission, in conformity with the procedural requirements of Chapter 131, Session Laws of Oklahoma, 1933,¹ by order of the Commission, the well on such a unit may be drilled at other than the approximate center.

"Separately owned tracts within single unit. (c) If

¹ Sections 84-135 of this title.

two or more separately owned tracts are embraced within an established spacing or drilling unit, any oil lessee or other person having the right to drill one of said separately owned tracts may do so; Provided, the allowable production from said separately owned tract shall be such proportion of its daily capacity as herein determined as the acreage of said separately owned tract bears to the entire acreage of the spacing or drilling unit upon which it is drilled. If, under the conditions first recited in this subsection, an oil lessee or other person owning a majority or more of the acreage included in the spacing unit, and/or having the right to drill the same for oil, shall elect to drill a well on his acreage, he shall give the other oil lessees or persons owning acreage in the unit, and/or having the right to drill the same for oil, 15 days written notice of his intention to drill, and such notice shall show the estimated reasonable cost of drilling, equipping and completing the well. And any of said oil lessees or persons within said 15 day period, by contributing to the lessee or person intending to drill said well such proportion of the estimated reasonable cost of drilling, equipping and completing the same, as the acreage of the contributor bears to the total acreage owned, or controlled for oil producing purposes by oil lessees or persons, who are participating in the cost of the well, shall thereupon be entitled to a corresponding share of seven-eighths ($\frac{7}{8}$ ths) of all production from said well, said payment to be made to the person drilling the well before he shall set his surface casing therein; each contributor, in virtue of his contribution, thereupon to become the owner of his proportionate share in the material and equipment used in drilling or operating said well. Any lessee or person so contributing to the cost of said well on said majority acreage shall thereupon be bound and obligated under the provisions of this subsection not to drill a well on the separate acreage held by him in said unit. Where another or other lessees or persons owning separate tracts in the unit contribute to the cost of the well drilled on the majority acreage, as above provided, the allowable production from said well

shall be such proportion of its daily capacity as herein determined, as the majority acreage plus the separately owned tract or tracts of the contributor or contributors bears to the entire acreage of the unit. Provided, if any person intending to contribute, as above set forth, shall not be satisfied with the estimate of the cost of drilling, or with the financial ability of the majority owner to drill the well, and if, thereupon, either or both of these questions cannot be settled by agreement among all persons intending to contribute to the cost of the well and the majority owner, the dissatisfied person, upon written application filed with the Commission and under the procedural requirements of Section 131, Session Laws of 1933,¹ including notice, shall have a hearing on his application before the Corporation Commission to determine either one or both of said questions as submitted in his said application. If the evidence before the Commission warrants a reduction in the estimated cost of said well, as herein provided, the Commission shall so order, and obedience to an order so made shall comply with the provisions of this subsection; Provided, further, that if on the final completion of the well, it shall be found that the original estimate of the person drilling the same, or the reduction thereof by the Commission, as herein provided, does not represent the actual reasonable cost of drilling, equipping and completing said well, nothing herein contained shall prevent the parties sustaining such cost, by agreement, or appropriate legal proceedings, from adjusting said actual cost among themselves, in the proportions hereinbefore set forth. If the evidence at said hearing warrants, the Commission by its order, shall require the person who gave notice of his intention to drill the majority acreage to deposit with the Commission, or in a bank designated by it, or in one agreed upon by the parties, a sufficient sum in cash to cover the estimated cost of drilling, equipping and completing said well, as made by said person, or as readjusted by said Commission, said sum to be returned to the depositor upon evidence furnished the Commission

¹ Sections 84-35 of this title.

that the cost of said well has been fully paid; or, in lieu thereof, the Commission may require the person intending to drill said well to file with said Commission his bond in the penal sum equalling said estimated cost, payable to the parties who shall have agreed to contribute to the cost of said well, as herein provided, duly signed by the principal and a responsible surety company qualified to do business in the State of Oklahoma. The Commission, in its said order, shall fix the time for the depositing of said money, or the filing of said bond, and in said order the terms and conditions of said bond shall be set forth. The person operating the well on said majority acreage, shall at all times have a lien on all the production of the persons contributing to the cost of the well to secure the payment of their respective proportions of the reasonable operating costs of said well; provided, further, however, that not more than Twenty-five (\$25.00) Dollars shall be charged per month, per well, by the person operating the well for gross over-head and administration costs.

"Nothing in this sub-section contained shall prevent an oil lessee or other person, having the right to drill a separate tract in a unit and who has not contributed to the cost of the well drilled on the majority acreage, as above provided, from drilling one well on his separate tract. In the event a producing well, or wells, is completed upon a unit where there are two or more separately owned tracts, any royalty owner, or group of royalty owners, holding the royalty interest under a separately owned tract, shall share in one-eighth ($\frac{1}{8}$) of all the production from the well or wells drilled within the unit in the proportion that the acreage of their separately owned tract bears to the entire acreage of the unit; Provided, where the lease of a person who has sustained his share of the cost of drilling the well on the majority acreage, as herein provided, stipulates a royalty in excess of one-eighth ($\frac{1}{8}$) of the production, or said lease shall be subject to an over-riding royalty, to an oil payment, or other obligation, than the lessee of said lease, out of his share of the seven-eighths ($\frac{7}{8}$ th) of the production from the well drilled on said majority acreage,

as hereinbefore provided, shall sustain and pay said excess royalty, over-riding royalty, or oil payment, and therefrom meet said other obligation due in respect of the separate tract held by him. The Corporation Commission, by its rules and regulations, is hereby vested with power to carry all the provisions of this sub-section into effect in order to preserve uniform well spacing throughout a common source of supply, where spacing units have been established; and, further, more effectively to prevent waste, as prohibited by Chapter 131, of the Session Laws of 1933, as amended by this Act, and to protect and adjust the correlative rights and obligations of all persons interested in a particular established unit, or in the source of supply wherein spacing units have been established under this Act.

“Enlargement of boundaries of common source of supply. (d) The Commission under proper application and proof, and in conformity with the procedural requirements of said Chapter 131, of the Session Laws of 1933,¹ shall have the power to enlarge and extend the boundaries of a common source of supply when oil development, or the trend of such development, shall indicate that an additional area should be included therein and, thereupon, the Commission, by proper order, shall require the same spacing and drilling units to the additional portion of the common source of supply. Laws 1933, ch. 131, p. 280, Par. 4; Laws 1935, p. 233, Par. 3.

“Par. 88. Rules and regulations—Considerations—Unreasonable discrimination—The Commission in making such rules and regulations as it shall deem necessary to carry out, effect the purposes, and enforce the provisions of Sections 1, 2, 3, and 4 of this Act,² shall give consideration to the prevention of waste caused by encroachment of water in the oil or gas bearing strata and the water conditions in any well or wells located in a common source of supply and/or to the smallness of production of any well or wells, by reason of which such well or wells cannot be

¹ Sections 84-135 of this title.

² Sections 84-87 of this title.

operated and oil produced therefrom in the proportion provided by Section 4¹ except at a loss to the owner of such well or wells and/or except so as to result in waste as defined in this Act and/or except to the injury and damage to other well or wells located in the same common source of supply; and, in order to prevent such loss, waste, injury, or damage, shall by rules and regulations permit any operator of such well or wells to produce a greater proportion of oil therefrom than provided by Section 4 hereof, provided that in so doing the Commission shall not permit unreasonable discrimination in favor of such operators against other operators in the same common source of supply. Laws 1933, ch. 131, p. 280, Par. 5.

"Par. 89. Determination of capacity of wells—Treating wells as entirety—Limitation on reduction.—For the purpose of determining the total production from any common source of supply, and the amount of oil which the operators of the wells therein are entitled to take therefrom, the capacity of each well to produce oil shall be from time to time ascertained and determined by the Commission under rules and regulations prescribed by it. All or any two or more of the wells on any lease or holding in any prorated common source of supply in this State may, when so provided by rule or regulation issued by the Commission, be regarded and treated by the Commission as an entirety instead of prorating each well thereon separately when and to the extent that such can be done without waste and without injury or injustice to the operators of other leases or holdings in the same common source of supply; and when an over-production of oil occurs from any prorated well producing in any common source of supply, the over-production of oil from such well may be by the Commission charged to the lease on which such well is located, as an entirety, when the Commission finds that the same may be done without injury or injustice to the operators and owners of offset wells; provided further that the capacity of each well in any prorated common source of supply to produce oil, hereinafter called potential, shall be ascer-

¹ Section 87 of this title.

tained and determined at regular intervals, provided that not more than six (6) months shall elapse between the determining of one potential before another potential shall be determined, and provided further that regardless of anything in this Act¹ to the contrary contained or authorized the Commission shall not by rule, regulation, order or otherwise reduce the allowable production from any oil well in this State below twenty-five (25) barrels of oil per day or its full production if it is incapable of producing twenty-five (25) barrels per day. Laws 1933, ch. 131, p. 281, Par. 6.

"Par. 90. Orders, rules and regulations—Each common source of supply.—The Commission is hereby empowered to make all such orders, rules and regulations applicable to each common source of supply as it may find to be necessary or proper and/or to make general orders, rules and regulations applicable alike to all common sources of supply in the State, in order to carry out the provisions of Sections 1 to 6, inclusive of this Act.² Laws 1933, ch. 131, p. 281, Par. 7.

"Par. 91. Meters on pipe lines—Commission to designate type—Inspection—Cost of operation.—The Commission is hereby empowered and authorized by its orders, rules, and regulations, to require that meters be installed (a) upon any pipe line used in purchasing and/or transporting oil in or out of any prorated common source of supply and/or from storage adjacent thereto and (b) upon any pipe line used in gathering and/or transporting oil from leases or storage in such common source of supply, to refineries, loading racks, and field or other storage, and/or to deliver such oil to other transportation lines, in or near such fields. All meters installed pursuant to any order, rule or regulation of the Commission made or issued by it under the provisions of this Section shall be of a type or types approved by it and the Proation Umpire³ shall be in mechanical construction and accuracy in operation, sufficient to register the oil transported through the pipe

¹ Sections 84-135 of this title.

² Sections 84 to 89 of this title.

³ Changed to Co.ervation Officer. See section 81 of this title.

line or pipe lines upon which such meters are installed with a degree of accuracy of not more than two (2) per cent from accurate. Said meters shall be installed and maintained at the cost and expense of the owner and/or operators of the pipe lines on which the same are required to be installed. No owner or operator of any such pipe line upon which a meter or meters shall have been installed and/or is being maintained pursuant to orders, rules and regulations of the Commission made hereunder, shall operate such pipe line or pipe lines at any time when the meter or meters thereon are not properly registering the flow of oil to the knowledge of such owner or operator or when by the exercise of reasonable diligence he or it should have known thereof, except or unless permission to do so by order of the Commission shall have been granted. Said meters shall at all times be subject to inspection and reading by the Proration Umpire,¹ his deputies, or any person authorized and ordered by the Commission to inspect or read the same. The provisions of this Section shall be applied and enforced by the Commission only when it finds and holds that the installation of such meter or meters is necessary to the enforcement of this Act,² and the installation of meters shall not be required generally, and for other purposes as a means of measuring oil. Laws 1933, ch. 131, p. 281, Par. 8.

"Par. 92. Reports—Oil purchased or transported—Forms—Verification.—The Commission is hereby authorized and empowered by orders, rules or regulations issued by it to require all takers of oil in or out of any prorated common source of supply to make and file periodically with the Commission, at such time or times, as often as the Commission shall in such orders, rules and regulations provide, reports of all oil purchased and/or transported by such takers within or from such prorated fields, and that duplicate copies thereof shall be filed with the Proration Umpire.³ Said reports shall be upon forms prescribed by the Commission and shall describe the leases and prop-

¹ Changed to Conservation Officer. See section 81 of this title.

² Sections 84-135 of this title.

³ Changed to Conservation Officer. See section 81 of this title.

erties, and, if ordered by the Commission, the wells from which crude oil has been taken by any such taker, and the amount thereof, and shall contain such other information as will enable or assist the Commission in enforcing the provisions of this Act,¹ which may be required by the orders, rules and regulations of the Commission; and shall be verified by the maker thereof upon oath. Laws 1933, ch. 131, p. 282, Par. 9.

“Par. 93. Operators—Books—Oil produced and sold.—Every operator in any prorated common source of supply shall, when required by any rule, order, or regulation of the Commission, keep books showing accurately (a) the amount of oil produced daily from each lease or property operated by him or it and, if the Commission shall order, from each well owned or operated by him or it on each such lease or property, and (b) the amount of oil sold or otherwise disposed of each day from each of his or its said properties, and, when so required by the order of the Commission, from each of his or its wells thereon and to whom the same is sold and delivered. Said books and all documents and records made by any such operator relating to the operation of his or its properties or wells in any such prorated common source of supply shall at all times be open for the inspection of the Commission or any officer, agent or employee authorized and directed by the Commission by its order to inspect or examine the same; and shall, upon the order of the Commission or the request of any such authorized officer, agent or employee be made immediately available for such inspection. Laws 1933, ch. 131, p. 282, Par. 10.

“Par. 94. Maps and drawings—Location of pipe lines and connections—Verification.—The Commission may require any and all operators in any prorated common source of supply to file with it maps or drawings which shall show the location of all pipe lines, connections, pumps and tanks, the size and capacities thereof used for producing or transporting oil from each well owned by such operator in such common source of supply, and may likewise require the

¹ Sections 84-135 of this title.

takers of oil from such common source of supply to file with the Commission maps and drawings showing the pipe lines, connections, tanks, size and capacity thereof used by such takers in taking or transporting oil from such common source of supply and from each and all wells therein. The correctness of such maps and drawings shall be verified upon oath as shall be provided by the orders, rules or regulations of the Commission. Laws 1933, ch. 131, p. 283, Par. 11.

"Par. 95. Reports—Quantity of oil produced and moved—Penalty.—The Commission shall by order require every operator in each prorated common source of supply to file periodically with it when and as often as required, and upon forms approved by it, reports which shall show (a) the quantity of oil produced, and the quantity of oil removed by each operator from his or its each lease or property in said common source of supply, and, unless otherwise provided by rule or regulation of the Commission, from his or its each well in said common source of supply, and (b) the amount of oil run to storage, delivered to common carrier, or to a purchaser or transporter through the operator's own pipe line, and, in the latter case to what destination, and the name or names of the person or persons purchasing or taking such oil, and which shall contain such further information as may be required by the Commission.

"If any operator shall fail or refuse to file any report or reports required by this Section or by any order, rule or regulation of the Commission made in pursuance of this section, in addition to the other penalties provided for in this Act¹ for such violation, the Commission may by its order require that said operator shall discontinue to produce any oil from any leasehold, property or well with respect to which such operator has failed or refused to make and file such report, until he or it shall have filed same; provided when any such operator shall have filed with the Commission any such report or reports as required by this section, or any order, rule or regulation of

¹ Sections 84-135 of this title.

the Commission, the Commission shall permit such operator to produce his or its well or wells, theretofore shut down by such order of the Commission, so as to recover and make up the oil that such operator would have been lawfully entitled to produce during the period such well or wells were shut down, if the order of the Commission requiring him or it to discontinue or reduce production of oil therefrom until such report or reports were filed had not been made. Laws 1933, ch. 131, p. 283, par. 12.

"Par. 96. Verification of reports, statements, maps and drawings.—When by an order, rule or regulation of the Commission made in pursuance of this Act,¹ any report, statement, map or drawing duly verified, is required to be filed with the Commission or any other officer, by any firm, trust, association or corporation, such report, statement, map or drawing shall be verified by (a) such member, agent or employee of such firm, trust or association, and (b) such officer or officers, agent or employee of such corporation as shall be provided or required by order, rule or regulation of the Commission. Laws 1933, ch. 131, p. 284, par. 13.

"Par. 97. Commission—Jurisdiction to make orders, rules and regulations—Hearings.—The Commission upon its own motion, or upon the petition of the Attorney General, or of the Proration Attorney,² or of the Proration Umpire,³ on behalf of the State, or of any operator, producer, or taker of oil from any common source of supply, to be affected by any such order, rule or regulation, filed with the Commission, shall have jurisdiction to make any and all orders, rules and regulations authorized and/or provided for in Sections 1 to 13 of this Act, inclusive,³ provided that said orders, rules, and regulations shall be made only after a hearing before the Commission, of which the Commission shall have given at least ten (10) days' notice, by one publication of such notice in some newspaper of general circulation printed in Oklahoma City, Oklahoma,

¹ Sections 84-135 of this title.

² Changed to Conservation Attorney. See section 81 of this title.

³ Changed to Conservation Officer. See section 81 of this title.

³ Sections 84-96 of this title.

at which hearing the Attorney General, or the Proration Attorney¹ or the Proration Umpire² upon behalf of the State, any operator or taker or producer of oil from any common source of supply, or any other person interested in such common source or sources of supply to be affected by the order, rule or regulation sought, shall have an opportunity to offer evidence and to be heard in support of or in opposition to such motion or petition for such order, rule, or regulation. Such notice of hearing shall be signed by at least a majority of the members of the Commission and shall specify (a) the time and place of hearing, (b) briefly the general nature of the order or orders, rule or rules, regulation or regulations sought in the proceeding before the Commission, and (c) the name or names or general description of the common source or sources of supply that may be affected by any such rule, order, or regulation, unless by such motion or petition filed the order or orders, rule or rules, regulation or regulations sought are intended to apply and affect the entire State.

"With respect to any motion or petition filed under the provisions of this Act,³ the service of notice thereof and any hearing thereon, and any order, rule or regulation, made thereon, the Commission shall have the power of a Court of record, and shall have the further powers and authority with respect thereto enumerated and provided in Section 15 of this Act;⁴ provided, that the Commission upon the date set or fixed in the notice of hearing in any proceeding commenced under the provisions of this Section, or at the time of such hearing therein, or of making any order or orders, rule or rules, regulation or regulations therein, may by its order provide that said proceeding shall be continued upon the docket of the Commission for further hearing or hearings therein, and for the issuance and/or promulgation of further order or orders, rule or rules, or regulation or regulations by the Commission

¹ Changed to Conservation Attorney. See section 81 of this title.

² Changed to Conservation Officer. See section 81 of this title.

³ Sections 84-135 of this title.

⁴ Section 98 of this title.

therein, modifying, supplementing, repealing or vacating any previous order, rule or regulation of the Commission therein as it shall determine; and if the Commission shall, in any such order rule or regulation continuing any such case upon its docket for further hearings and orders therein, fix the time and place of such hearing or hearings, no further notice thereof shall be required; but if the Commission shall not, in its orders continuing upon its docket any such proceeding for further hearings and orders therein, fix the time and place of such hearing or hearings, then no further hearing therein shall be had until notice thereof shall have been given for the same length of time and in the same manner provided in this Act for notice of the initial hearing in said proceeding. Laws 1933, ch. 131, p. 284, par. 14.

"Par. 98. Powers of Commission—Marshal of Commission.—In all matters pertaining to the making, issuing and enforcement of its orders, rules and regulations made under the provisions of this Act, the Commission shall have and exercise all of the following powers and authority; to-wit (1) Of visitation and of a Court of Record; (2) To administer oaths; (3) To compel attendance of witnesses; (4) To compel the production of books and records; (5) To punish for contempt any person guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session; (6) To punish as for contempt any disobedience or violation of the provisions of this Act and of any of its orders, rules, regulations, and judgments made or rendered by it under and in pursuance of the provisions of this Act; (7) To enforce the provisions of this Act, and compliance with any of its orders, rules, regulations or judgments by appropriate process, and by shut down orders, ordering and directing the shutting down or discontinuance of production of oil from any well or well, or operated by the offender with respect to which complaint has been made; and by orders or writs remedial or otherwise necessary or proper, to carry into effect its orders, rules, and regulations; (8) To appoint or desig-

¹ Sections 84-135 of this title.

nate one of its agents or employees or one of the deputies to the Proration Umpire¹ to act as Marshal of the Commission, who shall serve as such Marshal during its pleasure without additional compensation for such services, and who shall attend the sessions of the Commission, and when directed by it shall serve and execute orders, subpoenas, commitments and other process issuing from it. Laws 1933, ch. 131, p. 285, par. 15.

“Par. 99. Filing of papers and documents—Use as evidence.—When under any provision of this Act² or of any order, rule or regulation made in pursuance of this Act, any petition, motion, return, pleading, report, statement, map or drawing is required to be filed with the Commission, the same shall be deemed to be filed when filed with the Secretary of the Commission. Duplicate copies of all reports, statements, maps or drawings shall also be filed with the Proration Umpire.³ The original or any copy of any such reports, maps, drawings, statements or other documents duly certified by the Secretary of the Commission, when the contents thereof are material to the issues involved, shall be competent and admissible in evidence in any proceedings and hearings therein brought or had under the provisions of Section One (1) to Thirteen (13), inclusive, of this Act;³ and any such original or certified copy thereof shall, in any proceeding upon complaint or prosecution as for contempt against any person for violation of this Act or of any order, rule or regulation of the Commission, be competent and admissible in evidence to establish admissions against interest made by any defendant or defendants to such complaint or prosecution who filed or caused to be filed such report, map, drawing, statement or other document. Laws 1933, ch. 131, p. 286, par. 16.

“Par. 100. Witnesses—Depositions.—The Commission may cause depositions of witnesses residing within or without the State to be taken in any proceeding pending before it in any manner provided by law for taking depositions

¹ Changed to Conservation Officer. See section 81 of this title.

² Sections 84-135 of this title.

³ Changed to Conservation Officer. See section 81 of this title.

³ Sections 84-96 of this title.

in civil actions in courts of record; and any deposition so taken shall be sealed up and endorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the Secretary of the Commission, where it shall remain under seal until opened by the Secretary on order of the Commission, or at the request of a party to the proceeding, or an attorney for such party. Laws 1933, ch. 131, p. 286, par. 17.

“Par. 101. Procedure—Rules of—Enforcement of orders and rules.—The Commission shall have power with or without any notice of hearing to make and promulgate rules of procedure not inconsistent with the provisions of this Act ¹ to govern the filing, prosecution, hearing, and determination of proceedings authorized to be brought before the Commission and for the enforcement of its orders, rules and regulations made under the provisions of this Act; provided, that no order, rule or regulation of the Commission and no order made in the enforcement thereof shall be held void or be reversed merely because the Commission may not have promulgated procedural rules. Laws 1933, ch. 131, p. 286, par. 18.

“Par. 102. Contempt—Punishment—Enforcement of fines—Disposition of fines and penalties.—Punishment for contempt by the Commission of any person, guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session, or for disobedience of its subpoena, summons or other process, may be by fine not exceeding \$1,000, or by confinement in the county jail of Oklahoma County not exceeding one (1) year, or by both. Any person who shall disobey or violate any of the provisions of this Act ² or any of the orders, rules, regulations or judgments of the Commission issued, promulgated or rendered by it, shall be punished as for contempt. Punishment by the commission in proceedings as for contempt for disobedience or violation of any provision of this Act or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of this Act,

¹ Sections 84-135 of this title.

² Sections 84-135 of this title.

shall be by fine not exceeding in amount \$5,000, and each day such disobedience or violation shall continue shall constitute a separate and additional contempt, and shall be punished by separate and additional fines each in amount not in excess of aforesaid amount. Any fine or penalty assessed under the provisions of this Act shall constitute and be a lien upon all the property of the offender within the State, except the homestead of such offender, provided that, before any such fine or penalty shall become a lien upon any property of the offender as against third persons, a copy of the order or judgment of the Commission assessing such fine or penalty, certified by the Secretary of the Commission, shall be filed in the office of the Court Clerk of the County wherein any such property of the offender is located, and entered on the judgment docket of said court. If any such fine shall not be paid to the Commission within thirty (30) days after the order or judgment of the Commission imposing the same, the Commission shall issue an execution directed to the Proration Umpire¹ commanding him to seize sufficient property of the offender to satisfy said fine; and it shall be the duty of the Proration Umpire to levy upon any property of the offender found within the State, and to sell and dispose of the same in like manner as now provided and required of sheriffs in this State in the levy upon and sale of property under an execution upon a judgment of a District Court of the State, and all costs incurred in the issuance, execution and sale under such levy shall be taxed against the defendant and collected in the same manner provided herein for the collection of such fine. All moneys collected as fines or penalties under the provisions of this Act, shall, when paid into or received by the Commission, be by it paid to the State Treasurer of the State for the credit of the Proration Fund.² Laws 1933, ch. 131, p. 287, par. 19.

“Par. 103. Contempt—Proceedings—How commenced—Complaint—Citation.—Proceedings as for contempt for disobedience or violation of the provisions of this Act³ or

¹ Changed to Conservation Officer. See section 81 of this title.

² Changed to Conservation Fund. See section 81 of this title.

³ Sections 84-135 of this title.

of the orders, rules, regulations and judgments of the Commission made, issued and/or rendered under the provisions of this Act, may be commenced by the filing with the Commission by (a) the Attorney General, or (b) the Proration Attorney,² or (c) the Proration Umpire,³ or (d) Assistant Proration Umpire,⁴ or (e) by any producer of oil or taker in the State, of a complaint which shall, when filed by any producer of oil or taker, be verified upon information and belief. Said complaint by whomsoever filed shall state, (a) the name of the person, firm, trust, corporation, or association against whom the complaint is made; (b) the order or orders, rule or rules, regulation or regulations and judgment or judgments of the Commission, violation of which is charged; (c) and briefly in general terms the acts or omissions of the defendant constituting the violation of which complaint is made. Any such complaint may charge against any defendant one or more violations of the provisions of this Act and/or of any rule, order or regulation of the Commission made hereunder; provided, that the acts or omissions of the defendant constituting each violation charged shall be briefly stated in general terms in separately numbered paragraphs or counts of such complaint. Upon the filing of any such complaint, the Secretary of the Commission shall issue in the name of the State by him as Secretary of the Commission, addressed to the defendant or defendants, a citation to the defendant or defendants in said complaint, to which shall be attached a copy of said complaint. Said citation shall state (a) the date on which and by whom said complaint was filed and the name of the complainant, (b) a brief general description of the nature of the complaint, (c) a reference to copy of the complaint which shall be attached to said notice, (d) the date on which said complaint is set for hearing, which shall not be earlier than ten days from the date of such citation, and (e) a statement that unless the defendant shall on or before said date, for hearing file his or its pleadings to such complaints, allegations and

² Changed to Conservation Attorney. See section 81 of this title.

³ Changed to Conservation Officer. See Section 81 of this title.

⁴ Changed to Assistant Conservation Officer. See section 81 of this title.

charges therein contained, the same shall be taken as confessed. Service of said citation in such proceedings for contempt shall be had and return thereof made as herein-after provided. Laws 1933, ch. 131, p. 287, par. 20.

"Par. 104. Right of entry and inspection by conservation officer, his assistants and deputies.—The Proration Umpire,¹ his assistant and deputies shall have the right at all times to go upon and inspect oil and gas properties from which oil or gas is being produced, pipe lines, tank farms, and pump stations, for the purpose of ascertaining whether the provisions of this Act² and the orders, rules, regulations and judgments of the Commission made in pursuance of the provisions of this Act are being complied with, and shall report to the Commission any violation thereof. Laws 1933, ch. 131, p. 288, par. 21.

"Par. 105. Power to close wells—Orders regulating flow and production—Motion or petition for order—Temporary orders.—The Commission shall have the power to order closed, and by the Proration Umpire,¹ his assistant, and deputies, to close any well or wells which have been over-produced in violation of this Act² and/or of the orders, rules and regulations of the Commission and/or to order that the production of oil from such well or wells shall be reduced, until such condition of over-production of any such well or wells has been equalized so that the operator of such well or wells shall not be permitted to take therefrom a greater amount of oil than is permitted under the provisions of this Act and/or the orders, rules and regulations of the Commission, made in pursuance of the provisions of this Act; and may issue and enforce other orders to regulate the flow and production of oil and gas in such common source of supply for the purpose of preventing or stopping violations of its orders, rules or regulations, prescribing proration of production or ratable taking of oil in any common source of supply. Said orders of enforcement may be issued by the Commission upon its own motion, or upon written petition filed by (a) the Attorney

¹ Changed to Conservation Officer. See section 81 of this title.

² Sections 84-135 of this title.

General, or (b) the Proration Attorney,¹ or (c) the Proration Umpire, in the name of the State; or by any person interested in the proration or ratable taking of oil from any common source of supply where any such violation of the orders, rules or regulations of the Commission is alleged to have occurred. Said motion or petition for such orders of enforcement shall be filed with the Secretary of the Commission and shall state the name of the violator or violators and the provision of the statute, or the order, rule or regulation which it is charged are being violated, and briefly in general language the act or acts, omission or omissions, done or being done by the alleged violator or violators which constitute the violation of statute or of the order, rule or regulation of the Commission complained of. Any such petition, other than motions by the Commission for such enforcement orders, shall be verified by the officer or person filing the same, but such verification may be made upon affiant's best information and belief. Whenever any such motion or petition for an order of enforcement shall charge that the violation or violations by the defendant therein of the provisions of this Act or of orders, rules and regulations of the Commission complained of, is that defendant has produced or is producing oil from any well or wells in any common source of supply at a rate in excess of that allowed by the orders, rules and regulations of the Commission applicable thereto, the Commission, in its discretion, may, at the time of the filing of any such motion or petition, or at any time thereafter prior to its final hearing thereon and issuance of final or permanent order in such proceeding, make or issue a temporary order or orders, ordering and directing the defendant or defendants in any such proceeding to shut down and discontinue immediately, or to curtail the production of oil from any well or wells alleged to be involved in the violations complained of so as to comply with the orders, rules and regulations of the Commission; and said temporary order may further provide and require that if the defend-

¹ Changed to Conservation Attorney. See section 81 of this title.

ant or defendants shall fail to shut down or curtail the production from any such well or wells so ordered in the manner required by such order of the Commission within twenty-four (24) hours from the time of service of said order, the Proration Umpire, his assistant or deputies shall thereupon go upon the premises upon which said well or wells are located, and shut down the production of oil from said well or wells until the hearing provided in said temporary order of the Commission shall have been held, and/or until the Commission shall otherwise order. The defendant or defendants against whom any such temporary order has been issued shall have the right to appear before the Commission at any time prior to the date for hearing in said proceeding and move that such temporary order be dissolved or modified, and show cause to the Commission why same should be done. The Commission upon hearing any such motion, which shall be promptly heard, and may be had with or without notice thereof to the petitioner, may in its discretion dissolve or modify such temporary order or continue the same until final hearing in said cause shall have been held. Provided, however, that if upon final hearing before the Commission in such proceeding, or upon appeal to the Supreme Court, if an appeal from the decision of the Commission in such proceeding shall be taken, it shall be determined that any such temporary order was wrongfully issued by the Commission, the defendants or defendants shall be permitted to produce their well or wells, shut down, or the production from which was reduced by such temporary order of the Commission, so as to recover or make up the oil such defendant or defendants could have lawfully produced from such well or wells during the period such well or wells were shut down or the production thereof was reduced, if such temporary order of the Commission requiring such well or wells to be shut down, or the production therefrom to be reduced had not been made by the Commission. Laws 1933, ch. 131, p. 288, par. 22.

"Par. 106. Notice on filing of motion or petition.—Upon the filing of any motion or petition for order or orders of

nary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil. Laws 1915, ch. 25, par. 3.

"Par. 274. Common source of supply—Restrictions on production when full production would cause waste—Powers of Corporation Commission—Discrimination prohibited.—Whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill, into and produce oil from any such common source of supply, may take therefrom only, such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Laws 1915, ch. 25, par. 4.

"Par. 275. Wells gauged—Regulation by Corporation Commission—Agents.—For the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such

agents with the consent of the Governor, as may be necessary to enforce this act.' Laws 1915, ch. 25, par. 5.

"Par. 276. Enforcement of act—Hearings before corporation commission.—Any person, firm, or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act,¹ and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law. Laws 1915, ch. 25, par. 6.

"Par. 277. Appeals to Supreme Court—Effect on orders.—Appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act.¹ Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court. Laws 1915, ch. 25, par. 7.

"Par. 278. Violation—Penalties.—In addition to any penalty that may be imposed by the Corporation Commis-

¹ Sections 271-279 of this title.

sion for contempt, any person, firm, or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act,¹ shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars (\$5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment. Laws 1915, ch. 25, par. 8.

~~Par. 279. Partial invalidity.~~—The invalidity of any section, sub-division, clause or sentence of this act¹ shall not in any manner affect the validity of the remaining portion thereof. Laws 1915, ch. 25, par. 10.

OKLAHOMA STATUTES CUMULATIVE SUPPLEMENT 1949

Title 52, Sections 84 to 127.2

General Provisions

“Pars. 84-86. Repealed. Laws 1947, p. 327, Par. 6.—Amendment prior to repeal: Laws 1945, pp. 155, 156, Pars. 1-3.

*“Par. 86.1. Definitions.—For the purposes of this Act,*²

(a) The term “Commission” shall mean the Corporation Commission;

(b) The word “Person” shall include any individual, co-partnership, corporation, common law or statutory trust or association of whatever character;

(c) The term “Common Source of Supply” shall compromise and include that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid, by a common accumulation of oil or gas or both; provided, that, if any such area is underlaid, or appears from geological or other scientific data, or from drilling operations, or other evidence, to be underlaid by more than one common accumulation of oil or gas or both, separated from

¹ Sections 271-279 of this title.

² Sections 86.1-86.5 of this title.

each other by a strata of earth and not connected with each other, then such area, as to each said common accumulation of oil or gas or both, shall be deemed a separate common source of supply;

(d) The term "Owner" shall mean a person who has the right to drill into and to produce from any common source of supply and to appropriate the production, either for himself or for himself and others;

(e) The word "Oil" shall mean crude petroleum oil, and any other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods;

(f) The word "Gas" shall mean all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in the sub-section above;

(g) The term "Producer" shall mean any person who, along or in association with another person or persons, shall have the right to drill into and produce from, or who has any interest in production from, any common source of supply in this State;

(h) The term "Operator" shall mean any producer of oil or gas who has drilled a well or wells into a common source of supply and is engaged in operating such well or wells for the purpose of producing oil or gas therefrom;

(i) The term "Taker" shall include any person, who, acting alone, or jointly with any person or persons, is directly or indirectly purchasing or transporting by any means whatsoever or otherwise removing oil or gas from any common source of supply in this State. Laws 1947, p. 326, Par. 1.

"Par. 86.2. *Waste of oil—Defined—Prohibited—Prevention—Protection of fresh water strata and oil or gas bearing strata.*—The term 'waste', as applied to the production of oil, in addition to its ordinary meaning, shall include economic waste, under-ground waste, including water encroachment in the oil or gas bearing strata; the use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery.

of oil; surface waste and waste incident to the production of oil in excess of transportation or marketing facilities or reasonable market demands. The production of oil in the State of Oklahoma in such manner and under such conditions as to constitute waste as in this Act¹ defined is hereby prohibited, and the Commission shall have authority, and is charged with the duty, to make rules, regulations, and orders for the prevention of such waste, and for the protection of all fresh water strata and oil or gas bearing strata encountered in any well drilled for oil or gas. Laws 1947, p. 326, Par. 2.

"Par. 86.3. Waste of gas—Meaning—Prevention—Prohibition—Protection of fresh water and oil or gas bearing strata.—The term 'waste', as applied to gas, in addition to its ordinary meaning, shall include the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply; the inefficient or wasteful utilization of gas from gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in the efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing or releasing, directly or indirectly, into the open air, of gas from wells productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply. In order to prevent the waste or to reduce the dissipation of gas energy contained in a common source of supply, in addition to its other powers in respect thereof, the Commission shall have the

¹ Sections 86.1-86.5 of this title.

authority to limit the production of gas from wells producing gas only to a percentage of the capacity of such wells to produce. The production of gas in the State of Oklahoma in such manner and under such conditions as to constitute waste as in this Act¹ defined is hereby prohibited, and the Commission shall have authority and is charged with the duty to make rules, regulations, and orders for the prevention of such waste and for the protection of all fresh water strata and oil or gas bearing strata encountered in any well drilled for gas. Laws 1947, p. 327, Par. 3.

"Par. 86.4. Common source of supply—Orders, rules and regulations.—The Commission is hereby empowered after notice of hearing to make all such orders, rules and regulations applicable to each common source of supply as it may find to be necessary or proper and to make general orders, rules and regulations applicable alike to all common sources of supply in the State. It shall not be necessary to publish such order, rule or regulation, after its adoption or promulgation by the Commission, before it shall go into effect, nor shall it be necessary to publish any such order, rule or regulation in each subsequent annual report of the Commission. Provided, that the Corporation Commission shall not under the provisions of this Act¹ make any order establishing a well spacing or drilling unit. Laws 1947, p. 327, Par. 4.

"Par. 86.5. Procedural requirements.—This Act¹ shall be subject to all of the procedural requirements contained in Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, including the right of appeal to the Supreme Court of the State on the part of any person aggrieved by any action of the Commission under and pursuant to this Act. Laws 1947, p. 327, Par. 5.

"Par. 87. Repealed. Laws 1947, p. 331, Par. 2. Amendment prior to repeal: Laws 1945, p. 157, Par. 4.

"Par. 87.1. Common Source of supply of oil—Well spacing and drilling units.—Whenever the production from any common source of supply of oil or natural gas in this State

¹ Sections 86.1-86.5 of this title.

can be obtained only under conditions constituting waste or drainage not compensated by counter-drainage, then any person having the right to drill into and produce from such common source of supply may, except as otherwise authorized or in this Act provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

Establishment of units. (a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, or oil or gas within the State of Oklahoma. Such order establishing well spacing or drilling units for a common source of supply may be entered after a hearing upon the petition of any person owning an interest in the minerals in lands embraced within such common source of supply, or the right to drill a well for oil or gas on the lands embraced within such common source of supply, or on the petition of the Conservation Officer of the State of Oklahoma. When such a petition is filed with the Commission, the Commission shall give at least fifteen (15) days' notice of the hearing to be held upon such petition by one publication at least fifteen (15) days prior to said hearing, in some newspaper of general circulation printed in Oklahoma City, Oklahoma, and by one publication, at least fifteen (15) days prior to the date of said hearing, in some newspaper printed in the county, or in each county, if there be more than than one, in which the lands embraced within the applica-

tion are situated. Except as to the notice of hearing on such a petition, the procedural requirements of Sections 84 to 135, inclusive, of Title 52, Oklahoma Statutes of 1941, shall govern all proceedings and hearing provided for by this section.

Acreage of unit—Order establishing. (b) In establishing a well spacing or drilling unit for a common source of supply thereunder, the acreage to be embraced within each unit and the shape thereof shall be determined by the Commission from the evidence introduced at the hearing, and the following facts, among other things, shall be material;

(1) The lands embraced in the actual or prospective common source of supply (2) the plan of well spacing then being employed or contemplated in said source of supply; (3) the depth at which production from said common source of supply has been or is expected to be found; (4) the nature and character of the producing or prospective producing formation or formations; (5) any other available geological or scientific data pertaining to said actual or prospective source of supply which may be probative value to said Commission in determining the proper spacing and well drilling unit therefor, with due and relative allowance for the correlative rights and obligations of the producers and royalty owners interested therein.

The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area, which shall be uniform; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information. Subject to other provisions of this Act, the order establishing such spacing or drilling units shall direct that no more than one (1) well shall thereafter be produced from the common source of supply on any unit so established, and that the well permitted on that unit shall be drilled at the location thereon as prescribed by the Commission, with such exception as may be reasonably necessary

where it is shown, upon application, notice and hearing in conformity with the procedural requirements of Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, and the Commission finds that any such spacing unit is located on the edge of a pool and adjacent to a producing unit, or for some other reason that to require the drilling of a well at the prescribed location on such spacing unit would be inequitable or unreasonable. Whenever such an exception is granted, the Commission shall adjust the allowable production for said spacing unit and take such other action as may be necessary to protect the rights of interested parties.

Decrease of size of units—Additional wells—Enlargement of area—Size of units when oil within 9990 feet of surface. (c) The Commission shall have jurisdiction upon the filing a proper application therefor, and upon notice given as provided in sub-section (a) above, to decrease the size of the well spacing units or to permit additional wells to be drilled within the established units, upon proper proof at such hearing that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing the various types of wastes prohibited by statute, or any of said wastes, or will protect or assist in protecting the correlative rights of persons interested in said common source of supply, or to enlarge the area covered by the spacing order, if such proof discloses that the development or the trend of development indicates that such common source of supply underlies an area not covered by the spacing order. The Commission shall not establish well spacing units of more than forty (40) acres in size covering common sources of supply of oil the top of which lies less than 9990 feet below the surface as determined by the original or discovery well in said common source of supply.

Violations or order—Separately owned tracts or undivided interests—Pooling Costs. (d) The drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, after a spacing order has been entered by the Commission covering such

common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the drilling of such well, is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two (2) or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests, and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. All orders requiring such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests included in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditure required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested

parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners herein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are a charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this Act¹ the owner, or owners, of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths ($\frac{7}{8}$) interest in and to said rights and a lessor to the extent of the remaining one-eighth interest therein. Should the owners of separate tracts or interests embraced within a spacing unit fail to agree upon a pooling of their interests and the drilling of a well on the unit, and should it be established by final, unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then subject to all other applicable provisions of this Act, the owners of each tract or interest embraced within

¹ This section.

a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit.

In the event a producing well, or wells, are completed upon a unit where there are, or may thereafter be, two (2) or more separately owned tracts, any royalty owner or group of royalty owners holding the royalty interest under a separately owned tract included in such spacing unit shall share in the one-eighth ($\frac{1}{8}$) of all production from the well or wells drilled within the unit or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, in the proportion that the acreage of their separately owned tract or interest bears to the entire acreage of the unit; provided, where a lease covering any such separately owned tract or interest included within a spacing unit stipulates a royalty in excess of one-eighth ($\frac{1}{8}$) of the production, or said lease shall be subject to an overriding royalty, to production payment or other obligation, then the lessee of said lease out of his share of the working interests from the well drilled on said unit, shall sustain and pay said excess royalty, overriding royalty, or production payment, and therefrom meet any other obligation due in respect to the separately owned tract or interest held by him. Laws 1947, p. 328, Par. 1.

"Pars. 88, 89. *Repealed. Laws 1947, p. 331, Par. 1.*

"Par. 90. *Repealed. Laws 1947, p. 327, Par. 6.* Amendment prior to repeal: Laws 1945, p. 160, Par. 5. Orders, rules and regulations concerning common source of supply, see section 86.4 of this title.

"Par. 113. *Appeals—Power of Supreme Court—Supersedeas—Bond.* Proceedings for review.—Application of Moran, Okl., 200 P. 2d 758.

"Par. 121. *Director of Conservation—Oath and bond—Tenure—Salary—Duties.*—There is hereby created the office of Director of Conservation, which shall be filled as hereinafter provided. Said Director shall, before he enters

upon the duties of his office, take and subscribe to the Constitutional Oath of Office prescribed for State Officials, and shall give a bond to the State of Oklahoma in the sum of Ten Thousand Dollars (\$10,000.00), with surety to be approved by the Commission conditioned that he will honestly and faithfully perform his duties, and that he will pay to the State, in the manner prescribed by law, all money which comes into his hand by virtue of such office. The tenure of his office shall be at the pleasure of the Commission. The Director shall receive a salary to be fixed by the Commission not to exceed the sum of Six Thousand Six Hundred Dollars (\$6,600.00) per annum, payable monthly, and shall possess such powers and authority, and be charged with such duties as provided in this Act,¹ and in addition thereto he shall investigate all charges and complaints of violations of this Act, and any orders, rules and regulations of the Commission, and report all such violations to the Commission and to the Conservation Attorney, and he shall file charges and complaints with the Commission, or other proper tribunal or court, of all such violations. He shall obey and enforce all orders of the Commission. As amended Laws 1947, p. 332, Par. 4.

"Par. 124. Conservation Attorney—Tenure—Salary—Duties.—There is hereby created the Office of Conservation Attorney, which office shall be filled as hereinafter provided. The Conservation Attorney shall receive a salary to be fixed by the Commission not exceeding the sum of Six Thousand Six Hundred Dollars (\$6,600.00) per annum, payable monthly. Said attorney shall, before he enters upon the duties of his office, take and subscribe to the Constitutional Oath of office prescribed for the State Officials. The tenure of his office shall be at the pleasure of the Commission. The Conservation Attorney shall be the legal advisor to the Commission, Director of Conservation and Field Supervisors in all matters arising under this Act.¹ He shall appear for the State, the Director and Field Supervisors in all proceedings under this Act before the Commission, shall file and prosecute charges and com-

¹ Sections 84-135 of this title.

plaints of violations of this Act, and of any orders, rules and regulations of the Commission made hereunder, shall file and prosecute contempt proceedings, and proceedings as for contempt arising hereunder, and shall appear for the State, the Director and Field Supervisors, and prosecute or defend in their behalf all actions and proceedings in the courts of the United States in all courts of this State arising out of the enforcement of this Act, or any orders, rules or regulations of the Commission made hereunder; provided, however, that as to any proceeding authorized by this Act which shall be commenced and prosecuted by any producer or taker of oil, or other person, the Conservation Attorney shall be permitted to assist in such proceeding, but shall conduct the same only upon the request of the person instituting the same; and provided further, that as to any criminal action, in the district or county courts of this State, arising out of the enforcement of this Act or any orders, rules, or regulations of the Commission, the Conservation Attorney shall not supersede but shall assist the County Attorney in the prosecution thereof; and provided further, that any producer or taker of oil, or other interested person, shall be permitted to assist, through counsel, in any action or proceeding arising out of the enforcement of this Act, or any orders, rules or regulations made by the Commission hereunder.

In addition to his other duties, the Conservation Attorney shall be the legal advisor to the State Fuel Inspector, and shall appear for the State and said State Fuel Inspector in all proceedings before the Commission, and when requested, by the State Fuel Inspector, or the Commission, so to do, shall appear in any court in this State, and shall prosecute and defend all actions and proceedings in connection with the enforcement of the laws of the State of Oklahoma and the rules of the Commission relating to the inspection of petroleum products as set forth in Article 6, of Chapter 59, Oklahoma Statutes 1931, and the Acts amendatory thereof.² As amended Laws 1947, p. 332, Par. 5.

² Section 321 et seq. of this title.

"Par. 124.1. Assistant Conservation Attorney.—There is hereby created the office of Assistant Conservation Attorney, which office shall be filled as hereinafter provided. The Assistant Conservation Attorney shall receive a salary to be fixed by the Commission not exceeding the sum of Three Thousand Six Hundred Dollars (\$3,600.00) per annum, payable monthly. The tenure of his office shall be at the pleasure of the Commission, and he shall assist the Conservation Attorney in performing all of the duties imposed upon the Conservation Attorney by Section 5 hereof.¹ The Assistant Conservation Attorney shall have his salary and necessary expenses paid from the Conservation Fund. Laws 1947, p. 333, Par. 6.

"Par. 125. Appointments—Made by Commission—Tenure.—The Conservation Officer and Conservation Attorney shall be appointed by the Corporation Commission and shall hold office at its pleasure. As amended Laws 1943, p. 126, Par. 1.

Effective on approval April 3, 1943.

"Par. 126. Field supervisors.—The Corporation Commission may, at any time which it finds that the public interest will be subserved thereby, appoint not more than Fifteen (15) deputies, to be known as Field Supervisors, who shall have and exercise all the powers granted to them in this Act,² and who shall be charged with the performance of all the duties assigned to them by the Director of Conservation, and shall, when so ordered by the Commission, enforce any order, rule, or regulation, or serve any writ or process issued by the Commission; and the number shall be increased or decreased as the Commission shall order; provided, however, that not more than Fifteen (15) Field Supervisors shall at any time be appointed and act as such. When so appointed the salaries of said Field Supervisors shall be fixed by the Commission at not to exceed Three Thousand Six Hundred Dollars (\$3,600.00) each, per annum, payable monthly; provided that, said Field Supervisors shall have had at least five (5) years

¹ Section 124 of this title.

² Sections 84-135 of this title.

practical experience in the production of oil or gas, or be qualified engineers or geologists or have had five (5) years' experience as a deputy conservation officer. As amended Laws 1943, P. 126, Par. 2; Laws 1945, p. 161, Par. 1; Laws 1947, p. 333, Par. 7.

"Par. 127. Engineers or geologists—Assistant director—Statisticians—Reporters—Stenographers and clerks.—The Corporation Commission may employ four (4) oil and gas engineers or petroleum geologists who shall be either a graduate or registered engineer or geologist, one of whom shall be designated senior engineer or geologist, and be paid a salary of not to exceed Four Thousand Five Hundred Dollars (\$4,500.00) per annum and the other three of whom shall be paid a salary of Four Thousand Two Hundred Dollars (\$4,200.00), each per annum; one (1) assistant director of conservation and office manager who shall be paid a salary of not to exceed Four Thousand Two Hundred Dollars (\$4,200.00), per annum, and who shall have had at least five (5) years' experience in the oil and/or gas business, or five years' experience as an employee of the conservation department. One (1) assistant director of conservation and field supervisor, who shall receive a salary of not to exceed Four Thousand Two Hundred Dollars (\$4,200.00) per annum, and who shall have had five (5) years' experience in the oil and/ gas business or five (5) years' experience as an employee of the Conservation department; three (3) statisticians who shall be paid a salary of not to exceed three thousand Dollars (\$3,000.00) each per annum; two (2) court reporters, who shall be paid a salary of not to exceed Two Thousand Four Hundred Dollars (\$2,400.00) per annum; two (2) stenographers (who shall serve as secretary to the Director of Conservation and to the Conservation Attorney) who shall receive a salary of not to exceed Two Thousand Two Hundred and Twenty Dollars (\$2,220.00) each per annum; and six (6) stenographers and/or clerks, who shall receive a salary of not to exceed Two Thousand Dollars (\$2,00.00) each per annum. The salary of said employees shall be fixed by the Corporation Commission and shall be payable monthly.

ing those wherein is sought the issuance and promulgation of orders, rules or regulation~~s~~ by the Commission under the provisions of an Act of the Legislature approved February 11, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act and declaring an emergency," and of any amendments thereto,¹ but any and all such proceedings shall continue to final decision or action therein by the Commission, and all further proceedings, hearings and all orders, rules and regulations had or made therein by the Commission, and all enforcement thereof shall be under and subject to the terms and provisions of this Act. All existing orders, rules and regulations of the Commission heretofore made and issued under the provisions of aforesaid Act of the Legislature, approved February 11, 1915, and of any amendments thereto, until repealed, vacated or modified by order of the Commission, or of the Supreme Court on appeal therefrom, shall continue and remain in full force and effect and shall be enforced in the same manner and to like extent as if this Act had not been enacted, but all further proceedings and hearings in any proceedings heretofore brought and now pending before the Commission, and the institution, prosecution and hearing of any proceedings hereafter brought before the Commission in connection with any such existing orders, rules or regulations of the Commission shall be governed by the rules of procedure in this Act provided and/or that shall be issued by the Commission in pursuance of the provisions of this Act. Laws 1933, ch. 131, p. 301, par. 49.

"Par. 136. Application of procedural requirements—Right of appeal—Rules and regulations.—This Act² is subject to all of the procedural requirements of Chapter 131, Section Laws of Oklahoma, 1933,³ including the right of appeal to the Supreme Court of the State on the part

¹ Sections 271-279 of this title.

² Sections 85-87 and 136-138 of this title.

³ Sections 84-135 of this title.

of any person aggrieved by any action under said subsections, and the Corporation Commission is hereby vested with specific power and jurisdiction to establish rules and regulations for the carrying out and enforcement of all of the provisions of this Act. Laws 1935, p. 236, par. 4.

"Par. 137. Powers of cities and towns not limited or restricted.—Nothing in this Act¹ is intended to limit or restrict the rights of cities and towns governmental corporate powers to prevent oil or gas drilling therein, nor under its police powers to provide its own rules and regulations with reference to well-spacing units or drilling or production which they may have at this time under the general laws of the State of Oklahoma. Laws 1935, p. 236, par. 5.

"Par. 138. Partial invalidity, effect of.—If any Section, paragraph, sentence or phrase of this Act² shall be declared unconstitutional or void for any reason, by any court of final jurisdiction, such Decision shall not in any way invalidate or affect any other Section, paragraph, sentence or phrase of this Act, but the same shall continue in full force and effect. Laws 1935, p. 236, par. 6.

Interstate Compacts

"Par. 201. Compacts with other states authorized—Objectives—Fact finding agency—Uniform conservation and tax laws.—The Governor, or such Representative as he may appoint, is authorized to meet with Representatives of the Governors of other petroleum-producing states, and of the United States, for the purpose of agreeing upon a compact among such States effecting the following objectives:

"(a). Establishment of a joint state and federal fact-finding agency to consist of one Representative appointed by the Governor of each compacting state, and one Representative of the United States as Congress or the President shall direct. Said agency shall make periodic findings, subject to the approval and modification by the Presi-

¹ Sections 85-87 and 136-138 of this title.

² Sections 85-87 and 136-138 of this title.

dent, of the demand for petroleum to be produced within the United States, for withdrawals from storage, and for petroleum and products thereof to be imported. It shall thereupon, subject to concurrence of Representatives of compacting states capable of together producing two-thirds of the demand for domestic production so found, and approval and modification by the President, determine the part thereof allowable as production within each petroleum-producing state.

“(b). Voluntary regulation of production by each compacting State within its own borders in accordance with said determination of the joint fact-finding agency, to the extent that and in such manner as the laws of each State may authorize.

“(c). Formulation by the joint agency of uniform conservation measures and tax laws which it shall recommend to the compacting states, and exercise by said agency of such incidental powers as may be agreed upon. Laws 1935, p. 240, par. 1.

“Par. 202. Interstate compacts—When binding.—No compact made under the authority of this ~~Act~~¹ shall bind this State unless and until:

“(a). Said compact shall be ratified by the Legislatures of two of the States of Texas, California, Kansas and New Mexico, and the Legislature of this State, and Congress shall consent thereto.

“(b). Congress shall make provision for the control and limitation of importations in accordance with the findings referred to in Section 1.²

“(c). Congress shall provide for the control of interstate movements of petroleum produced or withdrawn from storage in violation of the laws and valid regulations of the several states, and products of such petroleum.

“(d). Congress shall provide for the control of interstate movements of petroleum produced in any State in excess of the determination, referred to in Section 1, of allowable production within said State as approved by the

¹ This section and section 201 of this title.

² Section 201 of this title.

President, and products of such petroleum. Laws 1935, p. 240, par. 2.

"Par. 203. Interstate compact ratified and confirmed.—The "Interstate Compact to Conserve Oil and Gas" entered into by the Governor of this State and the Representatives of certain other oil producing States at Dallas, Texas, on the 16th day of February, 1935, is hereby ratified, approved and confirmed by the State of Oklahoma: Laws, 1935, p. 242, par. 1.

"Par. 204. Terms and provisions of compact.

"An Interstate Compact to Conserve Oil and Gas.

Article I

"This agreement may become effective within any compacting State at any time as prescribed by that State, and shall become effective within those States ratifying it whenever any three of the States of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing State may become a party hereto as hereinafter provided.

Article II

"The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Article III

"Each State bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

"(a) The operation of any oil well with an inefficient gas-oil ratio.

"(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.

"(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

- “(d) The creation of unnecessary fire hazards.
- “(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.
- “(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

“The enumeration of the foregoing subjects shall not limit the scope of the authority of any State.

Article IV

“Each State bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

Article V

“It is not the purpose of this compact to authorize the States joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

Article VI

“Each State joining herein shall appoint one representative to a commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several States for adoption or rejection.

"The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said States, and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business."

"No action shall be taken by the commission except: (1) by the affirmative votes of the majority of the whole number of the compacting States, represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting States at said meeting, such interest to be determined as follows: Such vote of each State shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting States during said period.

Article VII

"No State by joining herein shall become financially obligated to any other State, nor shall the breach of the terms hereof by any State subject such State to financial responsibility to the other States joining herein.

Article VIII

"This compact shall expire September 1, 1937. But any State joining herein may, upon (60) days' notice, withdraw herefrom.

"The representatives of the signatory States have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory States.

"This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing State may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

"Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

E. W. MARLAN, The Governor of the State of Oklahoma;
 JAMES V. ALLRED, The Governor of the State of Texas;
 R. L. PATTERSON, For the State of California;
 FRANK VESELY, E. H. WELLS, HUGH BURCH, HIRAM M. Dow, For the State of New Mexico.

"The following representatives recommend to their respective Governors and Legislatures the ratification of the foregoing agreement::

JOHN W. OLVEY, of Arkansas;
 WARWICK M. DOWNING, of Colorado;
 WILLIAM BELL, of Illinois;
 GORDON F. VAN EENANAAM, GERALD COTTER of Michigan;
 RALPH J. PRYOR, E. B. SHAWVER, T. C. JOHNSON of Kansas.

Laws 1935, p. 242, par. 2; Laws 1939, p. 346, par. 2; Laws 1941, p. 212, par. 2.

"Par. 205. Governor as official representative of State—Powers and duties—Assistant representatives.—The Governor is hereby designated as the official representative of the State of Oklahoma on "The Interstate Oil Compact Commission" provided for in the compact herein authorized to be extended. The Governor shall exercise and perform for the State of Oklahoma all the powers and duties imposed by the aforesaid compact upon a representative to "The Interstate Oil Compact Commission;" provided, that he shall have the authority to appoint an assistant representative who shall act as the official representative of the State of Oklahoma on "The Interstate Oil Compact Commission" when the authority to so act is delegated to him by the Governor. In addition said assistant representative shall perform such other duties as the Governor may designate which are necessary to enable the State of Oklahoma to fully cooperate in accomplishing the objects of office prescribed by the Constitution which shall be filed with the Secretary of State, and he shall receive for his services the sum of Fifteen (\$15.00) Dollars, for each day he is engaged in the performance of

the duties of his office. Laws 1935, p. 244, par. 3; Laws 1935, p. 241, par. 1; Laws 1939, p. 349, par. 5; Laws 1941, p. 214, par. 5.

"Par. 206. Clerical, technical and legal assistants—Expenses—Office.—The assistant representative referred to in Section 5 of this Act¹ is hereby authorized with the consent of the Governor to employ such clerical, technical and legal assistants as may be necessary for him to properly perform the duties assigned him, and to incur such other expenses as may be necessary to enable the State of Oklahoma to fully cooperate in accomplishing the objects of "The Interstate Compact to Conserve Oil and Gas." Said assistant representative and his assistants, and the Governor when acting in his capacity as official representative of the State of Oklahoma on "The Interstate Oil Compact Commission," shall receive their actual and necessary traveling expenses when away from the State Capitol in the performance of their duties, which shall be paid from the special fund hereinafter created. The State Board of Affairs shall provide and furnish an office in the State Capitol for said assistant representative. Laws 1935, p. 241, par. 2; Laws 1939, p. 349, par. 6; Laws 1941, p. 214, par. 6.

"Par. 207. Interstate oil compact fund—Purposes for which used—Disposition of unexpended balance.—There is hereby created in the office of the State Treasurer a special fund to be known as "The Interstate Oil Compact Fund of Oklahoma" and all moneys which accrue to said fund are hereby appropriated for the purpose of paying the compensation of the assistant representative referred to in Section 5 of this Act;² the compensation of such clerical, technical and legal assistants as he may, with the consent of the Governor, employ; the actual and necessary traveling expenses of the assistant representative and his employees and of the Governor when traveling in his capacity as official representative of the State of Oklahoma on "The Interstate Oil Compact Commission;" all items

¹ Section 205 of this title.

² Section 205 of this title.

of office expense including the cost of office supplies and equipment, such contributions as the Governor shall deem proper to pay to the Interstate Oil Compact Commission to defray its expenses; and such other necessary expenses as may be incurred in enabling the State of Oklahoma to fully cooperate in accomplishing the objects of "The Interstate Compact to Conserve Oil and Gas." Said fund shall be disbursed by the State Treasurer upon warrants issued by the State Auditor upon sworn itemized claims approved by said assistant representative and the Governor; provided, that if at the end of any fiscal year any part of said special fund shall remain unexpended, such balance shall be transferred by the State Treasurer to and become a part of the Conservation Fund of the State for the ensuing fiscal year. Laws 1935, p. 241, par. 3; Laws 1939, p. 350, par. 7; Laws 1941, p. 214, par. 7.

"Par. 208. Duration of Act—Withdrawal from compact—Credit of funds to conservation fund.—The provisions of this Act shall be in force and effect so long as the State of Oklahoma shall be and remain a party to "The Interstate Compact to Conserve Oil and Gas." In the event the State of Oklahoma withdraws from said compact, the provisions of this Act shall cease to operate and any unencumbered moneys in "The Interstate Oil Compact Fund of Oklahoma" shall be credited to the Conservation Fund of the State of Oklahoma and be used for the purposes for which said fund is created. Laws 1935, p. 242, par. 4; Laws 1939, p. 350, par. 8; Laws 1941, p. 215, par. 8.

"Par. 209. Notice of passage and approval of act.—Notice of the passage and approval of this Act and of the Compact herein shall be given by the Governor of Oklahoma to the Governors of Texas, California, New Mexico, Arkansas, Colorado, Kansas, Illinois and Michigan; said States being represented during the consideration of said compact, and to the Department of State of the United States; said notice to be effected by the mailing of a certified copy of this Act¹ to the above enumerated officials. Laws 1935, p. 244, par. 4.

¹ Sections 202, 205 and 209-211 of this title.

"Par. 210. Governor to declare effective date of compact.—It is hereby made the duty of the Governor of Oklahoma to ascertain and to declare by public proclamation the effective date of the terms and provisions of said compact, in accordance with the provisions of Article I thereof.¹ Laws 1935, p. 244, par. 5.

"Par. 211. Further extensions—Withdrawal from compact—Determination and necessary steps.—The Governor of Oklahoma is further authorized and empowered for and in the name of the State of Oklahoma to execute agreements for the further extension of the expiration date of the said The Interstate Compact to Conserve Oil and Gas and to determine if and when it shall be for the best interest of the State of Oklahoma to withdraw from said Compact upon sixty (60) days' notice as provided by the terms of the Compact. In the event he shall determine that this State should withdraw from said Compact he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the State of Oklahoma from said Compact. Laws 1935, p. 244, par. 6; L. 1939, p. 349, par. 4, Laws 1941, p. 214, par. 4.

Gas

"Par. 231. Ownership of gas.—All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state. Laws 1913, ch. 198, p. 439, par. 1.

"Par. 232. Drilling rights—Restrictions on output.— Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well

¹ Section 204 of this title.

or wells to the natural flow of the well or wells of such other owners of the state common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well. Laws 1913, ch. 198, p. 440, par. 2.

"Par. 233. Sale of gas—Prices and amounts of gas to be taken—Delivery.—Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. Laws 1913, ch. 198, p. 440, par. 3.

"Par. 234. Misappropriation of gas—Liability for damage and penalties.—Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act,¹ shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars (\$500.00) and each day such violation is continued shall be a separate offense. Laws 1913, ch. 198, p. 441, par. 4.

"Par. 235. Misappropriation of gas—Criminal responsibility.—Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein

¹ Sections 231-235 of this title.

provided, either directly or indirectly, as an individual officer, agent, or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years. Laws 1913, ch. 198, p. 441, par. 5.

"Par. 236. Waste prohibited.—The production of natural gas in the State of Oklahoma, in such manner, and under such conditions as to constitute waste, shall be unlawful. Laws 1915, ch. 197, par. 1.

"Par. 237. Waste defined.—The term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas. Laws 1915, ch. 197, par. 2.

"Par. 238. Conservation of gas.—Whenever natural gas in commercial quantities, or a gas bearing stratum, known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours shall be considered a commercial quantity thereof; provided, that if in the opinion of the Corporation Commission, gas of a lesser quantity shall be of commercial value, said Commission shall have authority to require the conservation of said gas in accordance with the provisions of this act;¹ and provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days. Laws 1915, ch. 197, par. 3.

"Par. 239. Common source of supply—Excess gas supply—Apportionment and regulation to prevent waste.—Whenever the full production from any common source of

¹ Sections 236-247 of this title.

supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Laws 1915, ch. 197, par. 4.

"Par. 240. 'Common purchaser'—Discrimination in purchases prohibited—Regulation of purchases.—Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor

of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. Laws 1915, ch. 197, par. 5.

“Par. 241. Enforcement of Act—Hearings before Corporation Commission.—Any person, firm or corporation, or the Attorney General, on behalf of the state may institute proceedings before the Corporation Commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this Act;¹ and jurisdiction is hereby conferred upon said commission to hear and determine the same, said commission shall set a time and place when such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having general circulation in the state, and shall in addition thereto cause notice to be served in writing upon any person, firm or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction said commission is authorized to summon witnesses, make ancillary orders, and use such mesne and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations as now provided by law. Laws 1915, ch. 197, par. 6.

“Par. 242. Appeals to Supreme Court.—Appellate jurisdiction is hereby conferred upon the Supreme Court of this state to review the orders of said commission made under

¹ Sections 236-247 of this title.

this act.¹ Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from, may be superseded by the commission or by the Supreme Court upon such terms and conditions as may be just and equitable. Laws 1915, ch. 197, par. 7.

“Par. 243. Corporation Commission—Authority to make rules and regulations.—The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata, encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this act.¹ Laws 1915, ch. 197, par 8.

“Par. 244. Pipe line companies—Acceptance of act as prerequisite to right to operate.—Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm or corporation, shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this act.¹ Laws 1915, ch. 197, par. 9.

“Par. 245. Mine Inspector—Duties unchan. ed.—Nothing contained in this act¹ shall be construed to interfere with any duties now imposed by law upon the Chief Mine Inspector of the state or his deputies. Laws 1915, ch. 197, par. 10.

“Par. 246. Partial invalidity—Effect.—The invalidity of any section, subdivision, clause, or sentence of this act¹

¹ Sections 236-247 of this title.

shall not in any manner affect the validity of the remaining portion thereof. Laws 1915, ch. 197, par. 11.

"Par. 247. Violation—Penalties.—In addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act,¹ shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars (\$5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment. Laws 1915, ch. 197, par. 12.

"Par. 271. Waste prohibited.—The production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited. Laws 1915, ch. 25, par. 1.

"Par. 272. Production and sale regulated—Corporation Commission, authority of.—The taking of crude oil or petroleum from any oil bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State. Laws, 1915, ch. 25, par. 2.

"Par. 273. Waste defined—Regulations to prevent.—The term 'waste' as used herein, in addition to its ordi-

¹ Sections 236-247 of this title.

enforcement, as provided in the preceding section of this Act,¹ the Secretary of the Commission, in the name of the Commission and by him as its Secretary, shall issue a notice to the defendant or defendants named in such motion or petition, which said notice shall be addressed to the defendant or defendants in said petition, and shall state, (a) the filing of such motion or petition; (b) the order or orders, rule or rules, regulation or regulations of the Commission, or the provisions of this Act,² violations of which are charged therein; (c) the common source of supply in or with respect to which such violation has occurred or is occurring; (d) the date on which said motion or petition is set for hearing, which shall be on such date as shall be provided by order, rule or regulation of the Commission, but shall not be earlier than ten (10) days from the date of the issuance of such notice; and (e) a copy of said motion or petition filed in said cause shall be attached to said notice, and if any temporary order of enforcement shall have been made by the Commission in said proceedings, reference to such order shall be contained in said notice and a copy thereof shall be attached to said notice, in order that service of the same upon the defendant or defendants may be made at the same time as the service of said notice.

Laws 1933, ch. 131, p. 290, par. 23.

"Par. 107. Process—Service—How made—Return.— Except as otherwise provided or authorized in this Act,¹ service of any notice, petition or other pleading, citation, summons, subpoena, order of the Commission of which service is required, and execution, commitment or other process, in any proceeding before the Commission under the provision of this Act, may be made by the Proration Umpire,² his assistant³ or any deputy⁴ to the Proration Umpire, or by any other person authorized and directed by order of the Commission to make such service, and such service may be made upon any person, firm, trust, asso-

¹ Section 105 of this title.

² Sections 84-135 of this title.

² Changed to Conservation Officer. See section 81 of this title.

³ Changed to Assistant Conservation Officer. See section 81 of this title.

⁴ Changed to Deputy Conservation Officers. See Section 81 of this title.

ciation or corporation, required to be served, in the same manner as is provided for the service of summons in civil actions in the District Courts of the State, upon such persons, firms, trusts, associations, and corporations respectively. The officer or other person making any such service shall make his return thereof and file the same with the Secretary of the Commission. Said return shall show the time when the notice, pleading, citation, petition, summons, subpoena, order of the Commission, execution, commitment, or other process was received by him and the time and manner the same was served by him. Laws 1933, ch. 131, p. 291, par. 24.

“Par. 108. Oaths—Perjury—Punishment.—Every person who, having taken an oath that he will testify, declare or depose before the Commission, in any proceeding, or at any hearing before said Commission, authorized and provided for under the provisions of this Act,¹ shall wilfully and contrary to such oath state any material matter which he knows to be false, is guilty of perjury, and upon conviction shall be punished by imprisonment in the State penitentiary not more than five (5) years. Laws 1933, ch. 131, p. 291, par. 25.

“Par. 109. False verification of documents as perjury—Punishment.—Any person who shall verify under oath any report, map or drawing or other statement or document authorized or required by the provisions of this Act,¹ or by any order, rule or regulation of the Commission made under the provisions of this Act to be filed with the Commission, or with the Secretary of the Commission, or with any other officer, and who files or causes the same to be filed with the Secretary of the Commission or other officer, which states or contains any material matter which he knows to be false is guilty of perjury and upon conviction thereof shall be punished by imprisonment in the State penitentiary for not less than two (2) years, nor more than ten (10) years. Laws 1933, ch. 131, p. 291, par. 26.

“Par. 110. Market demand—Transportation and mar-

¹ Sections 84-135 of this title.

ketting facilities—Evidence—Proceedings and hearings.—In any proceeding or at any hearing before the Commission whereon the Commission shall require or shall deem it advisable to ascertain and/or fix the reasonable market demand and/or the transportation or marketing facilities for oil that may be produced from any common source of supply during any specific period of time thereafter, it shall be competent, subject to such limitations and conditions, as shall be prescribed and provided by general order or rule of the Commission, to receive in evidence in such proceeding or at such hearing, any statement which shall have been communicated to (a) the Commission, or (b) to the Secretary of the Commission, or (c) to the ~~Pro~~ ration Umpire,¹ by any purchaser or taker of oil by (a) telegram, or (b) letter, which shall state the amount of oil produced from said common source of supply (a) that such purchaser or taker, contemplates or intends he or it will purchase during the period of time involved; or (b) the capacity of his or its transportation or marketing facilities which will be, during the period of time involved, available for transportation and/or marketing oil that may be produced from such common source of supply; and the Commission in ascertaining and determining the transportation or marketing facilities, or the reasonable market demands for oil during any such period of time that may be produced from such common source of supply, may give such weight to such evidence that it shall determine the same is entitled. Laws 1933, ch. 131, p. 291, par. 27.

“Par. 111. Collateral attack on orders, rules and regulations—Appeals—Supreme Court.—No collateral attack shall be allowed upon orders, rules and regulations of the Commission made hereunder, but the sole method of reviewing such orders and inquiring into and determining their validity, justness, reasonableness or correctness shall be by appeal from such orders, rules or regulations to the Supreme Court. On appeal every such order, rule or regulation shall be regarded as *prima facie*, valid, reasonable and just. No court of this State except the Supreme Court,

¹ Changed to Conservation Officer. See section 81 of this title.

and it only on appeal, as herein provided, shall have jurisdiction to review, reverse, annul, modify or correct any order, rule, or regulation of the Commission within the general scope of its authority herein or to enjoin, restrain or suspend execution or operation thereof, provided that writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would under like circumstances lie to any inferior court or officer. Laws 1933, ch. 131, page 292, par. 28.

“Par. 112. Application to amend or modify orders—Hearing—Appeal.—Any person affected by any Legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same. Such application shall be in writing and shall be heard as expeditiously as possible after notice of the hearing thereon shall have been given in the manner provided by Section 14 of this Act.¹ An appeal shall lie to the Supreme Court from any order made by the Commission in any such proceedings or from the refusal of the Commission to make any order petitioned for therein, in the same manner and within the same time in which other appeals are authorized to be taken by the provisions of this Act,² and, on any such appeal, the Supreme Court may affirm the order of the Commission, or the Commission’s action in refusing to make the order petitioned for, or may itself make the order which the Commission should have made, or remand the cause to the Commission with directions to make such order as the Supreme Court may determine should have been made. Laws 1933, ch. 131, p. 292, par. 29.

“Par. 113. Appeals—Power of Supreme Court—Supersedeas-Bond.—In the manner now provided by law for taking appeals to the Supreme Court from orders, rules or regulations of the Commission affecting transportation and transmission companies, appeals may be taken to the Supreme Court from any order, rule or regulation made,

¹ Section 97 of this title.

² Section 84-135 of this title.

issued or promulgated by the Commission under the provisions of Section 1 to 13, inclusive,¹ (a) by the Attorney General, or (b) by the Proration Attorney,² or (c) by the Proration Umpire,³ on behalf of the State; or by any person aggrieved by such order, rule, or regulation appealed from. On such appeal the Supreme Court shall have power to determine the validity, the reasonableness and justice of such order, rule, or regulation and should the Court find from the record that the order, rule or regulation appealed from is incorrect, unreasonable, unjust or insufficient in any particular it shall amend, modify, or supplement such order, rule or regulation so as to make the same correct, reasonable, just or sufficient, or shall substitute therefor such order, rule, or regulation as in the Court's opinion is warranted by the record, is reasonable and just, and will effect the purposes and intent of this Act.⁴ On such appeals no order, rule or regulation shall be reversed and remanded to the Commission for a new trial thereon or for the taking of additional testimony unless the Court shall find that the evidence introduced before the Commission is insufficient to enable the Court to determine and make a proper order, rule, or regulation or that the party appealing did not have lawful notice of the hearing before the Commission, or that the Commission refused to receive competent evidence offered by the party appealing, which, if true, would leave the order, rule or regulation appealed from without substantial basis in fact. In like manner appeal may be taken to the Supreme Court from any order, judgment or decree issued, or final action taken by the Commission in any proceeding before it wherein it is sought to have any person adjudged (a) guilty of direct contempt, or (b) punished as for contempt for violation of any provision of this Act or of any order, rule or regulation of the Commission made hereunder, or (c) in which is sought any other order of enforcement for the purpose of enforcing the orders, rules, and regulations of the Commission made hereunder, provided any such appeal may

¹ Sections 84-96 of this title.

² Changed to Conservation Attorney. See section 81 of this title.

³ Changed to Conservation Officer. See section 81 of this title.

be taken and prosecuted only by (a) the Attorney General, or (b) the Proration Attorney, or (c) the Proration Umpire, on behalf of the State, or (d) by any person against whom any such order or decree of contempt, or as for contempt, or other order of enforcement shall have been rendered, or (e) by any other person whose interests are affected by such order, judgment, decree or final action taken by the Commission in such proceeding and who is aggrieved thereby.

"No order, rule, regulation, judgment or decree or final action of the Commission appealed from shall be superseded except by order of the Commission or the Supreme Court. No supersedeas shall be granted by either the Commission or the Supreme Court except upon condition that the appellant shall file in said appeal a bond with such surety as shall be approved by the Commission or the Supreme Court, granting such supersedeas. Said bond shall, (a) be in such amount, (b) contain such terms and conditions and (c) be payable to the State for its benefit or for the benefit of such person or persons as shall be damaged by such appeal, if the order, rule, regulation, judgment, decree or action of the Commission appealed from shall be affirmed; all as shall be provided and required by the Commission or the Supreme Court granting such supersedeas.

"All appeals under the provisions of this Act must be taken within 60 days from the date on which the order, rule, regulation, judgment, decree or final action of the Commission appealed from shall have been made, rendered or taken by the Commission; and except as otherwise provided in this Act, the hearing and determination thereof by the Supreme Court, and the enforcement of its judgment and decree therein, and against the sureties upon the supersedeas bond therein, shall be governed by the provisions of law now in force applicable to appeals in proceedings for contempt and other proceedings for the violation of orders, rules and regulations of the Commission affecting transportation companies; and to the extent possible under existing laws the Supreme Court shall give

precedence to all such appeals in the hearing and disposition thereof. Laws 1933, ch. 131, p. 293, par. 30.

"Par. 114. Obstructing or delaying performance of duties--Penalty.—Any person who knowingly and wilfully delays or obstructs any Proration Umpire,¹ any assistant² or deputy³ of the Proration Umpire, or any agent or employee of the Commission, in the performance of any duty enjoined upon such Proration Umpire, assistant or deputy of such Proration Umpire; or agent, or employee of the Commission, by the provisions of this Act⁴ or by any lawful order, rule or regulation of the Commission; or who knowingly and wilfully delays or obstructs any public officer of the State, or of any municipal subdivision thereof in the discharge or attempted discharge of any duty of his office, arising by virtue of or growing out of the enforcement of or an attempt to enforce the provisions of this Act, or any lawful order, rule, or regulation of the Commission made in pursuance of the provisions hereof; or who attempts by means of any threat or violence to deter or prevent any such Proration Umpire, assistant, or deputy of the Proration Umpire, or any agent or employee of the Commission from performing any duty imposed upon them when such duty arises by virtue of or grows out of the attempt to enforce the provisions of this Act or of any lawful order, rule, or regulation of the Commission made hereunder, shall be guilty of a misdemeanor and upon conviction thereof may be punished by fine not exceeding Five Hundred Dollars (\$500.00), or by confinement in the County jail not exceeding six (6) months, or both. If such threat or violence, or such attempted interference or obstruction is accompanied by the use or attempted use of firearms by any such person so offending, then such person shall be guilty of a felony and upon conviction may be punished by imprisonment in the State penitentiary for a period of not less than one (1) year

¹ Changed to Conservation Officer. See section 81 of this title.

² Changed to Assistant Conservation Officer. See section 81 of this title.

³ Changed to Deputy Conservation Officers. See section 81 of this title.

⁴ Sections 84-135 of this title.

nor more than five (5) years. Laws 1933, ch. 131, p. 294, par. 31.

"Par. 115. Conspiracy to violate Act—Punishment.—If two or more persons conspire to violate any provision of this Act,¹ or any lawful order, rule, or regulation of the Commission fixing the method, manner, amount and rate of production of oil or gas from any common source of supply in the State of Oklahoma or conspire to produce oil or gas from any well or wells in any common source of supply in the State of Oklahoma in excess of the allowable production permitted from such well or wells as fixed and determined by any lawful order, rule, or regulation of the Commission or conspire to avoid making or filing any report, map or drawing, or to file any false report, map or drawing with respect to the method, manner, time, place, amount, or rate of production of oil or gas from any well or wells in any common source of supply in the State of Oklahoma, or conspire to avoid the making or filing of any report, map or drawing, or to file any false report, map or drawing, with respect to the removal or transportation of oil or gas by any means whatsoever, from any common source of supply, as may be prescribed or required by this Act or by any lawful order, rule, or regulation of the Commission; or conspire to make any false statement therein with respect to any material matter contained therein, and one or more such parties shall do any act to effect the objects of any such conspiracy, then each of the parties to any such conspiracy shall, upon conviction in any court having jurisdiction of the offense, be fined not more than Five Thousand Dollars (\$5,000) or imprisoned in the State penitentiary for a period of not exceeding five (5) years, or both. Laws 1933, ch. 131, p. 295, par. 32."

"Par. 116. Violations of orders, rules and regulations—Injunction—Appeal—Supersedeas.—Where the Commission shall make and issue any order, rule, or regulation for the prevention or prohibition of any waste prohibited

¹ Sections 84-135 of this title.

by this Act,¹ or by any order, rule, or regulation of the Commission, authorized by this Act, and the same has been or is being violated by any person, firm, trust, association or corporation, the Attorney General of the State, or the Proration Attorney² may in the name of the State bring an action in the District Court of the County wherein the oil or gas properties have been or are being operated in violation of such order, rule, or regulation of the Commission or wherein any such violation of any order, rule or regulation of the Commission has been or is being committed, for a prohibitory and/or a mandatory injunction, enjoining and prohibiting the offender from further violating the provisions of this Act or any such order, rule, or regulation of the Commission and/or commanding and compelling such offender to obey such order, rule, or regulation; and such court is hereby given jurisdiction to grant such injunction or such other relief as may be proper in the premises, and shall have power to grant in any such proceedings temporary restraining orders and/or injunctions, to obtain which no bond shall be required. Neither a temporary nor permanent injunction granted under the provisions of this section shall be stayed or superseded on appeal therefrom except upon order of the Supreme Court, and then only upon application therefor, and hearing thereon after reasonable notice to plaintiff. In so far as permitted and not prohibited by existing statutes, all suits brought under the provisions of this section shall be given, in the hearing and trial thereof, by all courts in which the same are brought and prosecuted, precedence over other actions pending in said courts. Laws 1933, ch. 131, p. 295, par. 33.

"Par. 117. Bribery—Punishment.—Whoever corruptly gives, offers or promises to give to any Member of the Commission, Proration Umpire,¹ assistant³ or Deputy³ of a Proration Umpire, Proration Attorney,³ or agent or Employee of the Commission, any gift or gratuity whatso-

¹ Sections 84-135 of this title.

² Changed to Conservation Attorney. See section 81 of this title.

³ Change of names. See section 81 of this title.

ever with an intent to influence any such officer or person in his acts or conduct with respect to (a) enforcing any order, rule or regulation of the Commission made under this Act,¹ or (b) the discharge of any duty by any such officer or person imposed upon him by the provisions of this Act, or by any order, rule, or regulation of the Commission issued and promulgated under the provisions of this Act, shall be punished by imprisonment in the State penitentiary not exceeding five (5) years, and by fine not exceeding Five Thousand Dollars (\$5,000). Laws 1933, ch. 131, p. 296, par. 34.

“Par. 118. Bribery—Accepting bribe—Punishment—Any Member of the Commission, Proration Umpire,¹ assistant,² deputy,² agent or employee of the Proration Umpire, Proration Attorney,² or any agent or employee of the Commission who asks, receives or agrees to receive any gift or gratuity upon any agreement or understanding that his acts or conduct with respect to (a) enforcing any provision of this Act³ or of any order, rule, or regulation of the Commission made under or in pursuant of this Act, or (b) the discharge of any duty by any such officer or person imposed upon him by the provisions of this Act, or by any order, rule, or regulation of the Commission issued and promulgated under the provisions of this Act, shall be influenced thereby shall be punishable by imprisonment in the penitentiary not exceeding ten (10) years, and by fine not exceeding Ten Thousand Dollars (\$10,000). Laws 1933, ch. 131, p. 296, par. 35.

“Par. 119. Bribery—State’s evidence—Immunity.—In all cases involving the offering, promising, giving or receiving any gift, or gratuity, made criminal by Sections 34 and 35 of this Act,⁴ and in all cases for conspiracy under Section 32 of this Act,⁴ the party to such crime or crimes who shall first furnish information in relation thereto as against the other party or parties thereto, and in any prosecution therefor shall testify to the same truthfully and fully,

¹ Sections 84-135 of this title.

² Change of names. See section 81 of this title.

³ Sections 117 and 118 of this title.

⁴ Section 115 of this title.

shall not thereafter be criminally liable therefor, but in such cases no conviction shall be had on the uncorroborated testimony of one such witness. Laws 1933, ch. 131, p. 297, par. 36.

"Par. 120. Powers—Grant of not to restrict general powers.—Any grant of specific power or powers, and any imposition of any specific duty or duties upon the Commission by the provisions of this Act¹ shall not be construed to restrict or limit the general powers granted and the general duties imposed upon the Comimssion with respect to the enforcement of the provisions of this Act. Laws 1933, ch. 131, p. 297, par. 37.

"Par. 121. Conservation Officer—Bond—Salary—Tenure—Duties.—There is hereby created the office of Conservation Officer, which shall be filled as hereinafter provided. Said Conservation Officer shall, before he enters upon the duties of his office, take and subscribe to the Constitutional Oath of office presc. ed for State officials, and shall give a bond to the State of Oklahoma in the sum of ten thousand dollars (\$10,000.00) with surety to be approved by the Commission conditioned that he will honestly and faithfully perform his duties, and that he will pay to the State, in the manner prescribed by law, all money which comes into his hand by virtue of such office. The tenure of his office shall be at the pleasure of the Commission. The Conservation Officer shall receive a salary to be fixed by the Commission not ~~to~~ exceed the sum of four thousand eight hundred dollars (\$4,800.00) per annum, payable monthly, and shall possess such powers and authority, and be charged with such duties as provided in this Act, and in addition thereto he shall investigate all charges and complaints of violations of this Act, and any orders, rules and regulations of the Commission, and report all such violations to the Commission and to the Conservation Attorney, and he shall file charges and complaints with the Commission, or other proper tribunal or court, of all such violations. He shall obey and enforce

¹ Sections 84-135 of this title. X

all orders of the Commission. Laws 1933, ch. 131, p. 297, par. 38; Laws 1941, p. 215, par 1.

“Par. 122. Repealed. Laws 1941, p. 217, par. 5.

“Par. 123. Conservation Officer—Assistant Conservation Officer—Qualifications.—Be it provided, however, that the Proration Umpire¹ and Assistant Proration Umpire,² created under this act³ shall have had at least seven (7) years practical experience in the production of oil. Laws 1933, ch. 131, p. 298, par. 39a.

“Par. 124. Conservation Attorney—Tenure—Salary—Duties.—There is hereby created the office of Conservation Attorney, which office shall be filled as hereinafter provided. The Conservation Attorney shall receive a salary to be fixed by the Commission not exceeding the sum of four thousand eight hundred dollars (\$4,800.00) per annum, payable monthly. Said attorney shall, before he enters upon the duties of his office, take and subscribe to the Constitutional Oath of office prescribed for State officials. The tenure of his office shall be at the pleasure of the Commission. The Conservation Attorney shall be the legal advisor to the Commission, Conservation Officer and deputies in all matters arising under this Act. He shall appear for the State, the Conservation Officer and deputies, in all proceedings under this Act before the Commission, shall file and prosecute charges and complaints of violations of this Act, and of any orders, rules and regulations of the Commission made hereunder, shall file and prosecute contempt proceedings, and proceedings as for contempt arising hereunder, and shall appear for the State, the Conservation Officer and deputies, and prosecute or defend in their behalf all actions and proceedings in the Courts of the United States and in all courts of this State arising out of the enforcement of this Act, or any orders, rules, or regulations of the Commission made hereunder; provided, however, that as to any proceeding authorized by this Act which shall be commenced and prosecuted by any

¹ Changed to Conservation Officer. See section 81 of this title.

² Changed to Assistant Conservation Officer. See section 81 of this title.

³ Sections 84-135 of this title.

producer or taker of oil, or other person, the Conservation Attorney shall be permitted to assist in such proceeding, but shall conduct the same only upon the request of the person instituting the same; and provided further, that as to any criminal action, in the district or county courts of this State, arising out of the enforcement of this Act or any orders, rules, or regulations of the Commission, the Conservation Attorney shall not supersede but shall assist the County Attorney in the prosecution thereof; and provided further, that any producer or taker of oil, or other interested person, shall be permitted to assist, through counsel, in any action or proceeding arising out of the enforcement of this Act, or any orders, rules or regulations made by the Commission hereunder.

"In addition to his other duties, the Conservation Attorney shall be the legal adviser to the State Fuel Inspector, and shall appear for the State and said State Fuel Inspector in all proceedings before the Commission, and when requested, by the State Fuel Inspector, or the Commission, so to do, shall appear in any court in this State, and shall prosecute and defend all actions and proceedings in connection with the enforcement of the laws of the State of Oklahoma and the rules of the Commission relating to the inspection of petroleum products as set forth in Article 6, of Chapter 59, Oklahoma Statutes 1931, and the Acts amendatory thereof.¹ Laws 1933, ch. 131, p. 298, par. 40; Laws 1941, p. 216, par. 2.

"Par. 125. Appointments—Made by Commission.—The Proration Empire,² Assistant Proration Umpire,² and Proration Attorney,³ shall be appointed by the Commission. Laws 1933, ch. 131, page 299, par. 40-A.

"Par. 126. Deputies—Appointment—Powers—Salaries.—The Commission may, at any time when it finds that the public interests will be subserved thereby, appoint not more than twenty-one (21) deputies, to be known as deputy conservation officers, who shall have and exercise all the powers granted to them in this Act, and who shall be

¹ Section 321 et seq. of this title.

² Changed to Conservation Officer. See section 81 of this title.

³ Changed to Assistant Conservation Officer. See section 81 of title.

charged with the performance of all the duties assigned to them by the Conservation Officer, and shall, when so ordered by the Commission, enforce any order, rule, or regulation, or serve any writ or process issued by the Commission; and the number shall be increased or decreased as the Commission shall order; provided, however, that not more than twenty-one (21) deputies shall at any time be appointed and act as such; and one of said deputies shall be a petroleum engineer, who in addition to his educational qualifications shall have had at least five years' experience in production of oil, and whose salary shall not exceed three thousand dollars (\$3,000.00) per annum, payable monthly. When so appointed the salaries of not to exceed ten of said deputies shall be fixed by the Commission at not to exceed two thousand four hundred dollars (\$2,400.00) per annum, payable monthly, and the salaries of the other ten deputies shall be fixed by the Commission at not to exceed one thousand eight hundred dollars (\$1,800.00) per annum, payable monthly; provided that, not less than three fourths of the deputy conservation officers shall have had at least five years' practical experience in the production of oil; and provided further, that the traveling expenses of said deputy conservation officers shall not exceed seventy-five dollars (\$75.00) each in any month. Laws 1933, ch. 131, p. 299, par. 41; Laws 1941, p. 216, par. 3.

"Par. 127. Stenographic and clerical help—The Commission may employ such stenographic and clerical help as may be required, not exceeding nine (9) stenographers and clerks, one of whom may be designated "Chief Clerk" and one of whom may be a reporter. The salaries of said employees shall be fixed by the Commission, but the salary of the Chief Clerk shall not exceed two thousand seven hundred dollars (\$2,700.00) per annum, payable monthly, and the salary of the reporter shall not exceed two thousand one hundred dollars (\$2,100.00) per annum, payable monthly, and the salary of each other stenographer and clerk shall not exceed one thousand five hundred dollars (\$1,-

500.00) per annum, payable monthly. Laws 1933, ch. 131, p. 299, par. 42; Laws 1941, p. 217, par. 4.

“Par. 128. Conservation Officer and assistants—Powers—Expenses.—The Proration Umpire,¹ his assistant² and deputies,³ shall each possess all of the powers and authorities of a peace officer, with the right to bear firearms, and they and the Proration Attorney⁴ shall be allowed and paid out of the Proration fund⁵ their actual and necessary expenses while absent from their official headquarters on official duties, and all necessary office supplies and expense, including stationery, telephone and telegraph, postage and printing. Laws 1933, ch. 131, p. 299, par. 43.

“Par. 129 Repealed. Laws 1941, p. 217, par. 5.

“Par. 130. Vacancies—How filled.—Except as otherwise provided in this Act,⁴ all vacancies in any office or in any employment, provided or authorized under the provisions of this Act, may be filled by the same officer or officers and in the same manner and for the same term as is provided for the original appointment of such officers or employment. Laws 1933, ch. 131, p. 300, par. 44a.

“Par. 131. Inspector for commission—Power and duties.—The Commission shall have the right from time to time to designate one or more of its agents or employees to act as inspector for the Commission, who shall serve as such inspector during its pleasure, without additional compensation for such services, and who shall have the right, at all times, to go upon and inspect oil and gas properties from which oil or gas is being produced, oil and gas pipe line facilities, oil and gas pump station properties and refineries, for the purpose of ascertaining whether the provisions of this Act,⁵ and the orders, rules, regulations and judgments of the Commission, made in pursuance of the provisions of this Act, are being complied with, and shall report to the Commission any violations thereof. Such inspectors, when so appointed and acting, shall each possess

¹ Change of names. See section 81 of this title.

² Changed to Conservation Attorney. See section 81 of this title.

³ Changed to Conservation Fund. See section 81 of this title.

⁴ Section 84-135 of this title.

⁵ Sections 84-135 of this title.

all of the powers and authority of a peace officer and shall have the right to bear firearms. Laws 1933, ch. 131, p. 300, par. 45.

“Par. 132. State Board of Public Affairs—Rooms and supplies.—The State Board of Affairs shall provide such rooms, furniture and supplies as shall be necessary for the use of the Proration Umpire,¹ his assistant¹ and deputies,¹ and the Proration Attorney,¹ in carrying out their duties as prescribed by this Act.² Provided, that no expense incurred in carrying out the provisions of this section or any part of this Act, shall be paid out of the General Revenue Fund of the State of Oklahoma. Laws 1933, ch. 131, p. 300, par. 46.

“Par. 133. Conservation fund—Items paid therefrom.—There is hereby created in the State Treasury a fund to be known as the “Proration Fund”,³ which shall consist of all moneys that may be payable to said fund by law, and there shall be paid therefrom all salaries and expenses of the Proration Umpire,² his assistant,⁴ deputies⁴ and employees, and the Proration Attorney,⁴ and the salaries of reporters, stenographers and clerks authorized by this Act³ to be employed, and such other items as are or shall be authorized by law to be paid therefrom in connection with the enforcement of the provisions of this Act. Laws 1933, ch. 131, p. 300, par. 47.

“Par. 134. Partial invalidity—Effect.—If any section, paragraph, sentence or phrase of this Act⁵ shall be declared unconstitutional, or void for any other reason by any Court of final jurisdiction, such fact shall not in any manner invalidate or affect any other section, paragraph, sentence or phrase of this Act, but the same shall continue in full force and effect. Laws 1933, ch. 131, p. 301, par. 48.

“Par. 135. Pending actions not terminated.—The enactment of this Act⁵ shall not terminate any proceeding or proceedings now pending before the Commission, includ-

¹ Change of names. See section 81 of this title.

² Sections 84-135 of this title.

³ Changed to Conservation Fund. See section 81 of this title.

⁴ Change of names. See section 81 of this title.

⁵ Sections 84-135 of this title.

from the Conservation Fund. As amended Laws 1943, p. 127, Par. 3; Laws 1945, p. 161, Par. 2; Laws 1947, p. 333, Par. 8.

"Par. 127.1. *Traveling and subsistence expenses.*—Each of the fourteen (14) deputy conservation officers provided for in this Act¹ shall be entitled to receive five (5) cents per mile traveling expense when traveling in his privately owned automobile on official business of the Conservation Department, or any necessary traveling expense when not using his automobile. He shall be entitled to subsistence expense at not to exceed Five Dollars (\$5.00) per day within the State of Oklahoma. Each deputy conservation officer shall keep an accurate record by meter of the miles traveled by automobile, and an accurate and complete statement of all traveling, subsistence, and other expense, which shall be itemized, sworn to by claimant, and with proper receipts attached thereto, and when approved by the Conservation Officer and Corporation Commission the same shall be payable from the Conservation Fund. The limitation on subsistence for the Conservation Officer, the Conservation Attorney, the four oil or gas engineers or petroleum geologists and the Chief Clerk shall be not to exceed Seven Dollars and Fifty Cents (\$7.50) per day while traveling in the State of Oklahoma. When traveling outside the State such officers and employees shall receive and be reimbursed for their actual and necessary expenses to be evidenced by receipts for the money actually expended. All necessary traveling, subsistence, and other necessary expenses of any employee of the Conservation Department shall be paid from the Conservation Fund, and the General Fund of this State shall not be liable for the salary or expense of any employee of the Conservation Department. Laws 1943, P. 127; Par. 4, as amended Laws 1945, p. 162, Par. 3.

"Par. 127.2. *Trial examiner.*—There is hereby created the Office of Trial Examiner, which office shall be filled by the Corporation Commission. The Trial Examiner shall receive a salary to be fixed by the Commission, not exceed-

¹ Sections 125-127.1 of this title.

ing the sum of Five Thousand Dollars (\$5,000.00) per annum, payable monthly. The tenure of his office shall be at the pleasure of the Commission and he shall hear all causes referred to him by the Commission for hearing, and then shall file with the Commission his report of the proceedings had and his recommendation as to the disposition of the proceedings. The Corporation Commission is hereby authorized to refer any and all cases as it sees fit to said Trial Examiner, or any other person employed by the Commission, for hearing. The salary of the Trial Examiner shall be paid from the Conservation Fund. Laws 1947, p. 334, Par. 9.

APPENDIX "J"**SENATE BILL NO. 203 OF THE OKLAHOMA LEGISLATURE OF 1951****SECRETARY OF STATE, ITEM NO. 215****"An Act****Enrolled Senate Bill No. 203****By: GARVIN and MAHAN Of the Senate and BULLARD and MILLER Of the House.**

AN ACT AUTHORIZING AND RELATING TO THE UNITIZED MANAGEMENT, OPERATION AND DEVELOPMENT, IN WHOLE OR IN PART, OF COMMON SOURCES OF SUPPLY OF OIL, OIL AND GAS, OR GAS DISTILLATE IN THIS STATE; DEFINING COMMON SOURCE TO WHICH ACT IS APPLICABLE; CONFERRING AUTHORITY UPON AND DEFINING THE DUTIES OF THE CORPORATION COMMISSION IN REGARD THERETO; AUTHORIZING THE ORGANIZATION OF UNITS AND PRESCRIBING THE PROCEDURE THEREFOR, INCLUDING THE RIGHT AND METHOD OF APPEAL FROM ORDERS OF THE CORPORATION COMMISSION, TO THE SUPREME COURT FOR EQUITABLE RELIEF; DEFINING THE PURPOSES, NATURE, FUNCTIONS AND POWERS OF SUCH UNITS; AUTHORIZING THE INCLUSION OF PUBLIC LANDS WITHIN THE UNIT AREA OF A UNIT; LIMITING THE EFFECT OF ANTI-TRUST LAWS; MAKING OPERATIONS WITHIN A UNIT AREA BY PERSONS OTHER THAN UNIT UNLAWFUL; REPEALING TIT. 52, CHAP. 3b, SECTIONS 1-17, INCLUSIVE,

SESSION LAWS 1945; AND DECLARING AN EMERGENCY.

Be it Enacted by the People of the State of Oklahoma:

Section 1. The Legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation and further development of the oil and gas properties to which this Act is applicable, to the end that a greater ultimate re-

covery of oil and gas may be had therefrom, waste prevented, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights, proteeted:

Section 2. Subject to the limitations of this Act the Corporation Commission of the State of Oklahoma, hereinafter referred to as the "Commission", is hereby vested with jurisdiction, power and authority, and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of this Act.

Section 3. If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the Commission shall find (a) that the unitized management, operation and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply; and (b) that one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered; and (c) that the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (d) that such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected, it shall make a finding to that effect and make an order creating the unit and providing for the unitization and unitized operation of the common source of sup-

ply or portion thereof described in the order all upon such terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants and others, as well as the lessees. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the Commission as hereinabove provided and shall have attached thereto a recommended plan of unitization applicable to such proposed unit area and which the petitioner or petitioners consider to be fair, reasonable and equitable.

Section 4. The order of the Commission shall define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

Each unit and unit area shall be limited to all or a portion of a single common source of supply. Only so much of a common source of supply as has been defined and determined to be productive of oil and gas by actual drilling operations may be so included within the unit area.

A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created, and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

The plan of unitization for each such unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions and requirements found by the Commission to be reasonably necessary or proper

to effectuate or accomplish the purpose of this Act, and subject to the further requirements hereof, each such plan of unitization shall contain fair, reasonable and equitable provisions for:

(a) The efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan the actual operations within the unit area may be carried on in whole or in part by the unit itself, or by one or more of the lessees within the unit area as unit operator subject to the supervision and direction of the unit, dependent upon what is most beneficial or expedient. The designation of the unit operator shall be by vote of the lessees in the unit in a manner provided in the plan of unitization and not by the Commission.

(b) The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately-owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately-owned tracts to produce or receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof. A separately-owned tract's fair, equitable and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in this Act shall mean and include all oil and gas produced from a unit area from and after the effective date of the order of the Commission creating the unit regardless of the well

or tract within the unit area from which the same is produced.

(e) The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provision shall be made in the ~~plan~~ of unitization for carrying or otherwise financing lessees who are unable to promptly meet their financial obligations in connection with the unit.

(d) The procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation thereof, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of unit operation.

(e) The creation of an operating committee to have general over-all management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards or officers to function under authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards or officers and prescribing their tenure and time and method of their selection.

(f) The time when the plan of unitization shall become and be effective.

(g) The time when and conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up.

Section 5. No order of the Commission creating a unit and prescribing the plan of unitization applicable thereto.

shall become effective unless and until the plan of unitization has been signed, or in writing ratified or approved by lessees of record of not less than sixty three per cent (63%) of the unit area affected thereby and by owners of record of not less than sixty three per cent (63%) (exclusive of royalty interests owned by lessees or by subsidiaries of any lessee) of the normal one-eighth ($\frac{1}{8}$) royalty interest in and to the unit area, and the Commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified or approved by lessees and royalty owners owning the required percentage interest in and to the unit area. Where the plan of unitization has not been so signed, ratified or approved by lessees and royalty owners owning the required percentage interest in and to the unit area at the time the order creating the unit is made, the Commission shall, upon petition and notice, hold such additional and supplemental hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified or approved by lessees and royalty owners owning the required percentage interest in and to the unit area and shall, in respect to such hearings, make and enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest in and to the unit area have not so signed, ratified or approved the plan of unitization within a period of six (6) months from and after the date on which the order creating the unit is made, the order creating the unit shall cease to be of further force and effect and shall be revoked by the Commission.

Section 6. Except as otherwise herein expressly provided, all proceedings had under this Act including the filing of petitions, the giving of notices, the conduct of hearings and other action taken by the Commission shall be in the form and manner and in accordance with the procedure and procedural requirements provided in Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, or any amendment thereof with reference to proceedings

thereunder. Such additional notice shall be given as may be required by the Commission. The Conservation Officer, his assistant and deputies and the Conservation Attorney shall act without additional compensation as technical advisors to the Commission to the extent that the Commission may require. Any person aggrieved by any order of the Commission made pursuant to this Act may appeal therefrom to the Supreme Court of the State of Oklahoma upon the same conditions, within the same time and in the same manner as is provided in said Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, or any amendments thereof, for the taking of appeals from the orders of the Commission made thereunder.

Section 7. From and after the effective date of an order of the Commission creating a unit and prescribing the plan of unitization applicable thereto, the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in such plan of unitization shall be unlawful and is hereby prohibited.

Section 8. Each unit created under the provisions of this Act shall be a body politic and corporate, capable of suing, being sued and contracting as such in its own name. Each such unit shall be authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of this Act and by the plan of unitization.

The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at all times be several and not joint or collective and in no event shall a lessee or other owner of the oil and gas rights in the separately-owned tract be chargeable with, obligated or

liable, directly or indirectly, for more than the amount apportioned, assessed or otherwise charged to his interest in such separately-owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for in this Act.

Subject to such reasonable limitations, as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold estate and other oil and gas rights (exclusive of a one-eighth ($\frac{1}{8}$) royalty interest) in and to each separately-owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately-owned tract. The interest of the lessee or other persons who by lease, contract or otherwise are obligated or responsible for the cost and expense of developing and operating a separately-owned tract for oil and gas in the absence of unitization, shall however, be primarily responsible for and charged with any assessment for unit expense made against such tract and resort may be had to overriding royalties, oil and gas payments, royalty interests in excess of one-eighth ($\frac{1}{8}$) of the production, or other interests which otherwise are not chargeable with such cost, only in the event the owner of the interest primarily responsible fails to pay such assessment or the production to the credit thereof is insufficient for that purpose. In the event the owner of any royalty interest, overriding royalty, oil and gas payment or other interest which under the plan of unitization is not primarily responsible therefor pays in whole or in part the amount of an assessment for unit expense for the purpose of protecting such interest, or the amount of the assessment in whole or in part is deducted from the unit production to the credit of such interest, the owner thereof shall to the extent of such payment or deduction be subrogated to all of the rights of the unit with respect to the interest or interests primarily responsible for such assessment. A one-eighth ($\frac{1}{8}$) part of the unit production allocated to each separately-owned tract shall in all events be regarded

as royalty to be distributed to and among, or the proceeds thereof paid to, the royalty owners free and clear of all unit expense and free of any lien therefor.

Section 9. Property rights, leases, contracts, and all other rights and obligations shall be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of this Act and to any valid and applicable plan of unitization or order of the Commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

Nothing contained in this Act shall be construed to require a transfer to or vesting in the unit of title to the separately-owned tracts or leases thereon within the unit area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor shall the unit be regarded as owning the unit production. The unit production and the proceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold or possess shall not be acquired, held or possessed by the unit for its own account but shall be so acquired, held and possessed by the unit for the account and as agent of the several lessees and shall be the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use or disposal of the same in the proper conduct of its affairs, and subject to any lien the unit may have thereon to secure the payment of unit expense.

The amount of the unit production allocated to each separately-owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately-owned tract, shall for all intents, uses and purposes be regarded and considered as production from such separately-owned tract, and, except as may be otherwise authorized in this

Act, or in the plan of unitization approved by the Commission, shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production from such separately-owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately-owned tract shall be delivered in kind to the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners, subject to the rights of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such portions of the gas for operating purposes as may be provided in the plan of unitization.

Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfilment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the development thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately-owned tract within such unit area.

Nothing herein or in any plan of unitization shall be construed as increasing or decreasing the implied covenants of a lease in respect to a common source of supply or lands not included within the unit area of a unit.

Section 10. The unit area of a unit may be enlarged to include adjoining portions of the same common source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation and further development of such enlarged unit area, or the

plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as herein provided with respect to the creation of a unit in the first instance, except, that where an amendment to plan of unitization relates only to the rights and obligations as between lessees the requirement that the same be signed ratified or approved by royalty owners of record of not less than sixty three per cent (63%) of the unit area shall have no application.

Section 11. The Commissioners of the Land Office, or other proper board or officer of the State having the control and management of State land and the proper board or officer of any political, municipal, or other subdivision or agency of the State, are hereby authorized and shall have the power on behalf of the State or of such political, municipal, or other subdivision or agency thereof, with respect to land or oil and gas rights subject to the control and management of such respective body, board, or officer, to consent to or participate in any plan or program of unitization adopted pursuant to this Act.

Section 12. Neither the unit production or proceeds from the sale thereof, nor other receipts shall be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts shall be the income of the several persons to whom or to whose credit the same are payable under the plan of unitization. To the extent the unit may receive or disburse said receipts it shall only do so as a common administrative agent of the persons to whom the same are payable.

Section 13. For the purposes of this Act, unless the context otherwise requires:

(a) The term "lessee" refers not only to lessees under oil and gas leases but also to the owners of unleased lands or mineral rights having the right to develop the same for oil and gas.

(b) Any reference to a separately-owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas shall have reference thereto only in relation to the common

source of supply or portion thereof embraced within the unit area of a particular unit.

(c) The phrase "oil and gas" shall refer not only to oil and gas as such in combination one with the other, but shall have general reference to oil, gas, casinghead gas, casinghead gasoline, gas-distillate, or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source of supply of oil, oil and gas or gas-distillate.

(d) The term "person" shall mean and include any individual, corporation, partnership, common law or statutory trust, association of any kind, the State of Oklahoma or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind, or any other entity or being capable of owning an interest in and to a common source of supply of oil and gas.

(e) The term "unit expense" shall include and mean any and all cost, expense, or indebtedness incurred by the unit in the establishment of its organization, or incurred in the conduct and management of its affairs or the operations carried on by it.

Section 14. The provisions of this Act are declared to be severable, and, if any section, sentence, clause or part thereof be held invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not be construed to affect the validity of the remaining provisions of this Act.

Section 15. No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties, entered into pursuant hereto or with a view or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate any of the statutes of this State prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce.

Section 16. Title 52, Chap. 3b §§ 1-17 inclusive, Session Laws of Oklahoma, 1945, are hereby repealed.

Section 17. It being immediately necessary for the preser-

vation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of April, 1951.

BOYD COWDEN,

President Pro tem of the Senate.

Passed the House of Representatives the 14th day of May, 1951.

JAMES M. BULLARD,

Speaker of the House of Representatives.

Office of the Governor. This Bill was received by the Governor this 15th day of May, 1951, at 7:25 o'clock P. M.

By CLARABELLE SMITH,

Secretary.

(Title)

Approved by the Governor of the State of Oklahoma the 26th day of May, 1951, at 12:13 P. M.

JOHNSTON MURRAY,

Governor of the State of Oklahoma.

Office of the Secretary of State. Senate Bill No. 203. This Bill was received by the Secretary of State this 28th day of May, 1951, at 1:30 o'clock P. M.

JOHN D. CONNER,

Secretary of State.

By (Title)

Correctly Enrolled: ARTHUR L. PRICE, *Chairman*, Committee on Engrossed and Enroiled Bills.